

THE BOARD OF CHIROPRACTIC EXAMINERS

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE 2002 SUNSET REVIEW REPORT

Four Year Overview of the Board's Regulatory Program, Board's Response to Issues and Recommendations from Previous Sunset Review, Background Paper for the 2001 Public Hearing, and Final Recommendations of the Joint Committee and the Department of Consumer Affairs

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1.

OVERVIEW OF THE CURRENT REGULATORY PROGRAM OF THE CHIROPRACTIC BOARD

BACKGROUND AND DESCRIPTION OF THE BOARD OF CHIROPRACTIC EXAMINERS AND THE CHIROPRACTIC PROFESSION

HISTORY AND FUNCTION OF THE BOARD

The State Board of Chiropractic Examiners (Board) was created on December 21, 1922, as the result of an initiative measure approved by the voters of California on November 7, 1922. The Board regulates Doctors of Chiropractic and is mandated to impose and enforce Board-established standards that must be met by individuals in order to obtain a chiropractic license, and to discipline licensed individuals not upholding those standards.

The Board employs an Executive Director, who oversees a staff comprised of 14 permanent full-time employees, all working in a complex program dedicated to licensing, continuing education, enforcement and fiscal and support services.

Exhibit 1:A sets forth the current organization of the Board, including part-time and seasonal staff.

CURRENT BOARD COMPOSITION

The composition of the Board is governed by Section 1 of the Chiropractic Initiative Act (Act) (Exhibit 2:A), which provides for seven members (five professionals and two public) appointed by the Governor to serve four-year terms. Each member must be a United States citizen and a California resident for a minimum of five years prior to appointment. Additionally, professional members must have at least five years of licensure in California prior to appointment. Appointment restrictions include provisions that no more than two professional members at one time may be graduates of the same chiropractic college or be residents of the same county. Also, administrators, policy board members, or paid employees of chiropractic colleges are not eligible for Board appointments until more than one year has elapsed since termination of the college affiliation. Specific qualifications of Board members are set forth in Section 1 of the Act.

As of September 1, 2001, the Board consists of three members (two professional and one public). A listing of the current Board composition is set forth in Exhibit 1:B. Since Section 3 of the Act requires the affirmative vote of four Board members to carry motions, adopt resolutions and regulations or authorize the issuance of licenses, as of the submission of this report, the Board lacks a quorum.

BOARD COMMITTEES AND FUNCTIONS

Board committees generally consist of two or three Board members who are appointed by the Board Chair. Exhibit 1:C lists the current committee structure, including committee members and their corresponding responsibilities. Due to the lack of a full Board for approximately one and one-half years, as of April 2001, committees were established and assignments made based upon the number of Board members available and the priorities facing the Board; i.e., continuing education, regulation and sunset review. Although, these committees currently consist of only one or two members, it is anticipated that when the Board is fully appointed, committee assignments will increase to adequately address the issues facing each committee.

All committees meet as needed, and normally have no authority independent of the Board. However, to avoid program interruptions because of quorum issues, in April 2001, the Board delegated review and approval authority to the Continuing Education and Sunset Review Committees. Also, Board staff was delegated specific authority to continue issuing licenses. However, since the Regulation Review Committee has only review and recommendation authority, all regulatory enhancement proposals have been tabled until the Board achieves a quorum.

POWERS AND DUTIES OF THE BOARD

Section 4 of the Act prescribes the terms on which licenses may be issued to “practitioners of chiropractic”, prescribes the penalties for violations of the Act, and empowers the following authority to the Board:

- Adopt regulations necessary for the effective enforcement and administration of the Act.
- Examine applicants and revoke licenses.
- Determine minimum requirements for teachers in chiropractic schools and colleges.
- Approve chiropractic schools and colleges whose graduates may apply for California licensure.
- Do any and all things necessary or incidental to the exercise of the powers and duties granted by the Act.
- Employ staff, investigators, and examination commissioners necessary to carry out the provisions of the Act.

Title 16, Division 4 of the California Code of Regulations (CCR) (Exhibit 2:B) has refined the general functions of the Board as follows:

- Article 1 – General Provisions
- Article 2 – Practice of Chiropractic
- Article 3 – Application for License to Practice Chiropractic
- Article 4 – Approved Schools and Qualifications of Applicants
- Article 5 – Examinations
- Article 6 – Continuing Education
- Article 7 – Chiropractic Corporations
- Article 8 – Conflict of Interest Code
- Article 9 – Enforcement

Legal decisions that have in some way interpreted the responsibilities set forth in the Act and related regulations include the following:

A 1978 Los Angeles County Superior Court decision held that the Board's interpretation of the 1976 amendments to the Act did not reasonably provide adequate opportunity for two chiropractic colleges then instructing students in California to apply for and obtain status as candidates for accreditation from the CCE. This was remedied by amendments to the Act (Section 20) approved by the voters at the November 1978 general election.

In the mid-1980's, the Board adopted revisions to CCR Section 302, which set forth, among other things, the Board's position on the manner in which physical therapy procedures may be used by a licensed chiropractor. As a result, the California Chapter of the American Physical Therapy Association and the Medical Board of California filed a lawsuit seeking to negate the effects of the physical therapy aspects of the newly enacted regulation.

Following several years of litigation, the matter was resolved through superior court settlement, which effectuated the 1991 amendment to CCR Section 302 authorizing chiropractors to use physical therapy techniques in the course of chiropractic manipulations and/or adjustments, but prohibiting chiropractors from advertising "physical therapy". However, pursuant to the terms of the settlement, Section 302 does not preclude use of the word "physiotherapy" in advertising.

It should be noted that even in light of the well-publicized settlement, over the years the Physical Therapy Board continues to question the use of the word "physiotherapy" in advertisements by practitioners of chiropractic.

Currently, the Board is in the midst of a legal battle (Zuckerman v. Board of Chiropractic Examiners) challenging CCR Section 317.5, enacted in August 1996, which provides that licensed chiropractors who are disciplined can be compelled to pay the reasonable costs of investigation and enforcement. In an unpublished opinion, the Court of Appeal, Second Appellate District, affirmed the Board's disciplinary order based on findings of sexual misconduct by respondent Zuckerman, but reversed the award of costs, denying cost recovery pursuant to Section 317.5.

The Board filed a Petition for Rehearing, which was denied by the Court of Appeal. Subsequently, the Board filed a Petition for Review with the California Supreme Court, which the Court granted in May 2001. Briefs have been filed, but no oral argument has been scheduled.

The Attorney General's Office has advised that the outcome of the Zuckerman case will impact every consumer board, commission or committee that has cost recovery authority. If the Supreme Court upholds the Court of Appeal decision to invalidate CCR Section 317.5, cost recovery authority provided other licensing entities under Business and Profession Code (B&P Code) Section 125.3 will be in jeopardy.

MAJOR PROGRAM ADVANCEMENTS ACHIEVED SINCE LAST SUNSET REVIEW

Since its initial sunset review in 1999, the Board has experienced major changes in all aspects of its program components. In March 2000, the Board hired a new Executive Director to continue the aggressive program enhancements begun in 1996. Major accomplishments during the past 18 months are as follows:

Internal Changes

1. Office Relocation. The Board had occupied its previous space for approximately 5 years, during which staffing levels increased from 8 to 14, approximately 57 percent. Staff was cramped into every nook and cranny, including file rooms. In addition to having no room for program files, there was absolutely no room for additional staff growth either. The search for suitable space was conducted over a two-year period and adequate space was secured April 2001.
2. Staffing Levels Maximized. As of July 2001, all budgeted positions were filled. Until that time, the Board had been heavily relying on student assistants and retired annuitants to carry out many of the important day-to-day responsibilities of positions held vacant due to staff promotions, long-term employee health issues, and recruitment problems. In order to fill all vacancies, the Board aggressively recruited qualified individuals from within and outside state service.

In 1999, the Board had intended to seek staffing increases to handle the Corporation and Satellite Office programs. However, reorganization of the unit resulted in efficient workload distribution, eliminating the need for additional staff.

3. Workload Backlogs Eliminated. Because all budgeted Board positions were filled as of July 1, 2001, the backlogs experienced in the Licensing and Enforcement Units have been totally eliminated.
4. Web Site Development and Implementation. With the launch of its web site in April 2000, the public is assured easy access to licensing and enforcement information. This important program enhancement has brought the Board up to par with all other licensing boards. Information contained on the Board's web site consists of:

- The Board's mission, a history of the Board and a listing of current Board members.
- Fact Sheets.
- Fee Schedule.
- Downloadable duplicate license request form, restoration application, petition for reinstatement form, early termination of probation and reduction of penalty form, and referral service applications.
- Interactive consumer complaint form.
- On-line license verification.
- Disciplinary Report Sheets from January 1998 to present.

- Regulation updates, including:
 1. Proposed Regulations – public hearing notices and proposed text
 2. Pending Regulations – text submitted to Office of Administrative Law
 3. Newly Enacted Regulations – approved text
- Important Notices – Copies of notification mailings to licensees pertaining to significant changes in licensing requirements or enforcement activities.
- The Chiropractic Initiative Act.
- California Code of Regulation, Title 16, Division 4, pertaining to the practice of chiropractic.
- Current listing of Board-Approved Continuing Education Providers and Courses.

The Board is constantly refining its web site and plans on enhancing it to include the following:

- Disclosure of citations issued.
- All Board forms in a downloadable format.
- On-line license application capabilities.
- Interactive and on-line filing of consumer survey and complaint forms.

Because the Board has no information technology expert on staff, current Board staff handles web management with the assistance of the Teale Data Center. Although this web management method allows the Board to provide the public a greater degree of access, it is not ideal. The Board requested budget authority for FY 2001/02 to hire a full-time information technology expert to assist in all its computer needs, including web site maintenance and improvement. Although the budget request was denied, the Board intends to seek this staff augmentation for FY 2002/03.

5. Data Base Enhancements. The Board completed development and launched its computerized cost recovery tracking system, and developed on-line access to Secretary of State's corporation records to facilitate registration of chiropractic corporations. The Board also designed and implemented in-house procedures for tracking historical chiropractic corporation data and cross-referencing license histories. Board staff continues to utilize the national database, CIN-BAD, to check enforcement histories on all applicants for licensure in California – new applicants and reciprocity applicants.
6. Improved Licensing Unit Communication and Information Access. The Licensing Unit designed and implemented a more “user friendly” notice for license renewals, and updated its various application forms (i.e., license, reciprocity, corporation and satellite office) to better serve its applicants and licensees.

Board staff has also made a concerted effort to develop better lines of communication with Board-approved colleges. To that end, Board staff has held in-house meetings with various college representatives, and visited one California-based chiropractic college in 2001. In the future, staff plans to visit a minimum of two colleges per year, including out-of-state

campuses.

7. Conduct Consistent Random Continuing Education Audits. The Board conducts monthly random continuing education audits on renewing licensees, as well as routine audits on licensees failing to renew in a timely manner, resulting in an overall audit increase from 1 percent per month to approximately 2 percent per month, or 24 percent per year of its entire licensing population.
8. Update of Fact Sheets. All fact sheets were reviewed and updated in July 2001. The process is ongoing and done on an as-needed basis; i.e., enactment of new regulations and/or legislation, or change in Board policies and practices (Exhibit 3).
9. Toll-Free Consumer Complaint Hotline. In an effort to promote consumer outreach, the Board recently established a toll-free “consumer complaint hotline”. It is anticipated that the offering of a toll-free number will encourage California citizens report suspect practice and complaints.

Strategic Planning

Since its last sunset review, the Board has significantly expanded its Strategic Plan (Exhibit 4) to add and/or enhance goals and objectives that will serve to better protect the public. A review of the Board’s current Strategic Plan reflects how very seriously the Board considered the recommendations and comments of the Joint Committee in planning for the future by incorporating program enhancements suggested by the Joint Committee in its short-term and long-term goals.

Regulatory Changes

Since the Board’s 1999 review, the following regulations have been enacted:

- Section 304 -- Discipline by Another State.
- Section 310.2 – Use of Title by Unlicensed Persons.
- Section 317 – Unprofessional Conduct.
- Section 325 – Denial of License Application; Issuance of Probationary License.
- Section 331.12.2 – Curriculum.
- Section 331.12.3 -- Eligibility to Take Board Exam.
- Section 331.13 – Physical Facilities.
- Section 355(b) & (c) – Renewal and Restoration.
- Section 355.1 – Continued Jurisdiction of a License.
- Section 355.2 – Inactive License.
- Section 356 – Course Content.
- Section 367.9(b)(2) – Shares: Ownership and Transfer.
- Section 384 – Disciplinary Guidelines.

- Section 390 – Issuance of Citations.

Exhibit 5 provides a brief description of each of the regulations outlined above.

As of September, 2001, the Board has one rulemaking file pending at the Office of Administrative Law; Section 386, which provides for non-stayed license revocations in cases where licensees have second separate convictions for fraud.

Legislative Efforts

The Business and Professions Committee agreed to include the Board in its 2001 omnibus bill (SB 724) in order to effectuate the following amendments to the B&P Code:

- Section 125.3 – Cost Recovery Authority.
- Section 125.9 – Fine Authority.
- Section 650 – Pertaining to Kickbacks.

In addition to the above, which, if signed by the Governor, will become effective January 1, 2002, a recent amendment to B&P Code Section 803.5 added the Chiropractic Board to the requirement that court clerks and prosecutors report criminal cases brought against licensees to the Board.

Board Studies

The Board has also conducted or commissioned the following surveys and opinions:

- Distance Learning. The Board has been gathering information from other California licensing agencies and out-of-state chiropractic regulatory boards to determine how to best implement distance learning as a part of its continuing education program. Exhibit 6:A sets forth the findings of the Board's survey of California boards to date. No Board action has been taken on the distance learning issue because of lack of a quorum. However, once the Board vacancies are filled, this issue will be fully researched by the Continuing Education Committee and addressed by the full Board.
- Chiropractic College Curriculums. On an annual basis, the Board surveys all CCE-accredited chiropractic colleges in an effort to track curriculum trends nationwide (Exhibit 6:B).
- Attorney General's Opinion. The Board sought a Legal Opinion (Exhibit 6:C) from the Attorney General to determine whether or not B&P Code Section 650 applied to chiropractors. The Legal Opinion concluded that Section 650 does not apply to chiropractors under its own terms, but may apply by reference to the Act through Section 13, which provides, in part, that "Chiropractic licentiates shall observe and be subject to all state and municipal regulations relating to all matters pertaining to the public health,...." The Legal

Opinion interprets Section 13 of the Act to serve its purpose of protecting the public health by finding that chiropractors must follow the provisions of Section 650. The statute constitutes a state regulation relating to an important aspect of the public health. Since chiropractors shall observe and be subject to *all* state and municipal regulations relating to *all* matters pertaining to the public health, they must observe the prohibition of Section 650.

In order to protect its authority under Section 13 from legal challenge, the Board is seeking statutory authority under B&P Code Section 650 through SB 724 (see discussion above).

Public Access to Licensing Data

The Board releases licensee information to the public pursuant to the Public Records Act; i.e., date of licensure, primary place of practice, license status and disciplinary action, if any. The Board has no requirements that licensees provide information pertaining to awards, certificates, certifications or specialty areas.

LICENSING DATA

In fiscal year 2000/01, there were approximately 15,295 active and inactive licensed chiropractors. Board records indicate that there were also 5,188 forfeited licenses and 1,929 cancelled licenses. The following table sets forth active and inactive licensing data for the past four fiscal years:

LICENSING DATA FOR THE BOARD OF CHIROPRACTIC EXAMINERS	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Licensed	Total: 13,438	Total: 14,013	Total: 14,663	Total: 15,295
California	12,160	13,028	13,018	14,161
Out-of-State	1,278	985	1,645	1,134
Applications Received	Total: 728	Total: 721	Total: 736	Total: 745
Applications Denied	Total: 4	Total: 6	Total: 10	Total: 8
Licenses Issued	Total: 566	Total: 723	Total: 683	Total: 708
Renewals Issued	Total: N/A	Total: 11,997	Total: 12,257	Total: 12,308
Statement of Issues Filed	Total 8	Total: 1	Total: 3	Total: 9
Statement of Issues Withdrawn	Total: 0	Total: 0	Total: 2	Total: 2
Licenses Denied	Total: 2	Total: 0	Total: 7	Total: 10

In addition to practice licenses, the Board also issues certificates to practice at locations other than a chiropractor's primary place of practice (Satellite Office Certificates), and proof of registered chiropractic corporations (Corporation Certificates). The following table reflects the types and numbers of certificates issued over the past four years:

CERTIFICATES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Certificates	Total: 869	Total: 940	Total: 980	Total: 1,511
Satellite Office	551	555	548	588
Corporation	318	385	432	923
Certificates Issued	Total: 136	Total: 248	Total: 261	Total: 792
Satellite Office	109	205	217	703
Corporation	27	43	44	89
Renewal Certificates Issued	Total: 714	Total: 709	Total: 823	Total: 824
Satellite Office	182	189	298	325
Corporation	532	520	525	499
*(Notes)				

BUDGET AND STAFF

REVENUE SOURCES

The Board is entirely special-funded through its licensing fees, fees for services and enforcement program cost recovery revenue. The Board's main source of revenue is derived from its annual renewal fees. It should be noted that unlike the majority of other licensing boards, this Board does not charge an initial license fee, only a license application fee. Renewal fees are due one year after initial licensure.

Chiropractors are required to renew their licenses annually. Prior to July 1, 1991, chiropractors' licenses expired December 31st of each year. Section 12 of the Act was amended July 1, 1991, to change the renewal scheme from annual to cyclic; i.e., each license expires yearly on the last day of a chiropractor's birth month.

The following table sets forth the Board's primary revenue sources:

Fee Schedule	Current Fee	Statutory Limit
License Application Fee	\$100.00	\$100.00
Exam Fee	N/A	No Limit
Admin. Fee	N/A	N/A
Original License Fee	N/A	N/A
License Renewal Fee	\$150.00	\$150.00
Forfeiture Fee (Late Renewal Fee)	\$150.00	\$150.00

In addition to the fees set forth above, the Board also charges fees for services set forth in Exhibit 7:A.

REVENUE AND EXPENDITURE HISTORY

The following table sets forth the Board's revenues and expenditures over the past four fiscal years:

REVENUES	ACTUAL				PROJECTED	
	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Licensing Fees	\$1,925,000	\$1,952,000	\$1,918,000	\$2,035,000	\$2,100,000	\$2,167,000
Fines & Penalties	71,000	51,000	89,000	123,000	128,000	130,000
Other	67,000	67,000	77,000	22,000	21,000	24,000
Interest	144,000	164,000	208,000	260,000	269,000	278,000
TOTALS	\$2,207,000	\$2,234,000	\$2,292,000	\$2,440,000	\$2,518,000	\$2,599,000

EXPENDITURES	FY 97-98	FY 98-99	FY 99-00	FY 00-01	FY 01-02	FY 02-03
Personnel Services	\$ 516,000	\$ 507,000	\$ 504,000	\$ 591,000	\$ 600,000	\$ 600,000
Operating Expenses	1,231,000	1,306,000	1,271,000	1,255,000	1,518,000	1,518,000
(-) Reimbursements	54,000	33,000	50,000	42,000	46,000	46,000
(-) Distributed Costs	0	0	0	0	0	0
TOTALS	\$1,693,000	\$1,780,000	\$1,725,000	\$1,804,000	\$2,072,000	\$2,072,000

EXPENDITURES BY PROGRAM COMPONENT

The following table reflects the Board's expenditures by program component. Enforcement expenditures for FY 2000/01 dropped because of savings incurred in the Board's investigation line item. Approximately \$64,000 of the savings in investigation costs was applied to offset the increase in Attorney General costs. The remainder of the savings was applied to one-time expenses incurred for office relocation. Because of rising Attorney General fees, it is anticipated that future savings recognized from more cost effective investigations will be used to offset increasing Attorney General costs.

EXPENDITURES BY PROGRAM COMPONENT	FY 97-98	FY 98-99	FY 99-00	FY 00-01	Average % Spent by Program
Enforcement	\$ 693,000	\$ 750,000	\$ 756,000	\$ 729,000	42%
Examination	N/A	N/A	N/A	N/A	N/A
Licensing	116,000	144,000	112,000	114,000	7%
Administrative	884,000	886,000	857,000	961,000	51%
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A

TOTALS	\$1,693,000	\$1,780,000	\$1,725,000	\$1,804,000	
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FUND CONDITION

Exhibit 7:B contains an analysis of the Board's fund from FY 1999/00 through the FY 2001/02 budget year, and a projections for FY 2002/03 and FY 2003/04.

As the fund analysis reflects, at the close of FY 2000/01, the Board's reserve level was reported to be approximately \$4,339,000. There is no mandated statutory requirement for a specific level of reserve. However, the Board agrees that a minimum of a three to four-month reserve is necessary to assure program integrity in the event of unforeseen fiscal needs.

The Board is aware that its reserve level currently exceeds the recommended three to four-month reserve level. In an effort to follow the Joint Committee's recommendation to spend down the reserve to recommended levels, the Board conducted an analysis of its fund and found that the following program enhancements would not adversely impact its future operations:

- Enforcement staff augmentation of two positions and \$114,000 for FY 2001/02. The proposal requested a Staff Services Analyst assist in creating, implementing, coordinating and overseeing the Board's citation program, and an Office Technician to perform support duties vital to the Board's enforcement program, such as consumer complaint processing currently handled by a part-time student assistant.

Although the budget request was denied by the Department of Finance, the Board is seeking this augmentation for fiscal year 2002/03.

- Administrative staff augmentation of 2.4 positions and \$121,000 for FY 2001/02. The proposal requested one Staff Services Analyst to coordinate and oversee the implementation of the Board's legislative and regulatory efforts, one Office Assistant to perform general clerical duties vital to the Board's daily operations (i.e., receptionist, main telephone line coverage, telephone license verifications, and mail processing and distribution), and a 0.4 Office Technician position to reinstate a .4 position inadvertently abolished in FY 99/00.

The Department of Finance approved one position to handle the Board's legislative and regulatory efforts. The Board negotiated a higher classification (Associate Government Program Analyst) to oversee all Board member activities as well.

- Information technology expert for FY 2001/02 to oversee and coordinate all web site enhancements and maintenance, as well as provide hands-on development and maintenance of all internal databases. It was anticipated that this position would also oversee all hardware and software evaluations and enhancements, and serve as the Board's representative to DOIT.

This budget change proposal was denied by the Department of Finance (DOF), however DOF did authorize the Board a budget augmentation of \$50,000 to contract with private

vendors for information technology assistance for fiscal year 2001/02. The Board is seeking budget authority in this area for fiscal year 2002/03.

- Temporary help augmentation to assist in hiring retired annuitants to conduct Board investigations and to supplement partial limited term office technician and office assistant positions to handle receptionist and continuing education duties. The Department of Finance denied this budget change proposal. Since the Board has been successful in contracting its investigative services out to private vendors, it does not intend to seek temporary help augmentation for investigators at this time. However, the Board is seeking budget authority to increase its partial limited term positions for fiscal year 2002/03.
- Out-of-state travel augmentation to allow Board staff to visit out-of-state Board-approved chiropractic colleges and to diversify participation in regulatory association activities held out side California. The Department of Finance denied this budget augmentation; however, the Board is seeking budget authority to increase its out-of-state travel funding for fiscal year 2002/03.

Following the successful completion of its program enhancements, the Board also intends to carefully review its fund condition and, if necessary, ascertain the manner in which a temporary reduction or suspension of renewal fees can be achieved.

LICENSURE REQUIREMENTS

BOARD-APPROVED CHIROPRACTIC COLLEGES

Section 4(g) of the Act requires that candidates for California licensure graduate from Board-approved chiropractic colleges and CCR Sections 330-331.15 specifically delineate requirements necessary to attain Board-approval status. These regulations also specify that schools must meet the minimum accreditation standards of the Council on Chiropractic Education (CCE), which is a voluntary and private peer review process, and not identical to the Board's approval process, which is public and mandatory.

Currently, there are 15 private Board-approved chiropractic colleges in the United States, as well as one foreign chiropractic college that hold Board approval – the Canadian Memorial Chiropractic College. Exhibit 8:A contains a listing of all Board-approved Chiropractic colleges.

EDUCATION, EXPERIENCE AND EXAMINATION REQUIREMENTS

Applicants seeking a California chiropractic license are required to complete the following educational requirements:

- High school diploma or its equivalent (GED).

- Effective September 1, 2001, ninety (90) semester hours, or equivalent quarter hours, applicable toward a baccalaureate degree at an institution or institutions accredited by a nationally recognized agency. All applicants must earn a cumulative grade point average of at least 2.50 on a scale of 4.00 of pre-professional postsecondary education in accordance with the standards adopted by CCE. It should be noted that administrators from the colleges it accredits dominate CCE.
- CCE standards currently require course work in the subjects of language or communication skills, psychology, social science, biology, general or inorganic chemistry, and physics. No grade below a “C” may be counted in the science fields, and the applicant’s cumulative average may not be below a 2.25 on a 4.0 grading scale.
- Successful completion of 36 months at a Board-approved chiropractic college consisting of at least 4,400 hours of course work in the curriculum subjects set forth in CCR Section 331.12.2, which was last amended in 2001.

The Board does not issue temporary licenses or permits (CCR Section 320), except in the case of the absent parent (Health and Welfare Code Section 11350.6). Prior to being granted a California chiropractic license, applicants are required to pass the National Board of Chiropractic Examiners (NBCE) Examination, Parts I, II, III, IV and Physiotherapy, as well as the California Law Examination (CLE). The NBCE examination is designed to test entry-level competency in all areas of chiropractic study, and the CLE is designed to measure applicants’ knowledge of California laws and regulations pertaining to the practice of chiropractic.

Although there are no postgraduate residency or internship requirements, many chiropractic colleges offer post-graduate training through preceptorship programs. Currently, California law does not address these programs except to acknowledge their existence and reiterate that participants will be judged as unlicensed practitioners (CCR Section 312).

APPLICANT EDUCATION AND EXPERIENCE VERIFICATION

Applicant education and experience verification begins with the Board’s “Application for License to Practice Chiropractic” (Exhibit 8:B), which requires the following information:

- pre-professional education;
- chiropractic education;
- passage of the NBCE examination, Parts I, II, III, IV, and Physiotherapy;
- state and federal criminal record clearance (fingerprint reports); and,
- licensure certification from other states (if applicable).

Primary source verification is intended to prevent falsification of documents. For example, transcripts, from both graduate and chiropractic schools bearing an official seal, must be provided to the Board directly from the issuer; those mailed to the Board by applicants will not be accepted. Also, each chiropractic college is required to complete a

college certificate for each student verifying that the required hours as set forth in CCR Section 331.12.2 have been completed. CCR Section 354 permits

applicants notified in writing of passage of the Board examination to begin practice upon receipt of a license certificate. To prevent unlicensed practice, the Board allows applicants to take the CLE only when all other requirements have been met, including completion of all background checks.

The Board is continually reappraising licensing requirements. Eight licensing jurisdictions have established bachelor's degree preprofessional training requirements – Florida, Kansas, Maryland, Montana, North Carolina, Rhode Island, Wisconsin, and the U.S. Virgin Islands. The bachelor's degree requirement issue has been a topic of debate for years by the Federation of Chiropractic Licensing Boards (FCLB) and CCE. To date, opposition of the chiropractic colleges and defenders of the status quo have blocked proposals to make a bachelor's degree requirement a national standard.

Since California licensees constitute approximately 19 percent of the nation's active chiropractors, any change in education requirements by this Board will be broadly felt and will become the basis for a national trend. However, in an effort to assure that Board action in this area will not unnecessarily bar qualified individuals from entering the chiropractic profession, the Board will carefully assess the situation before proposing a change in education requirements that would require amending the Act.

CRIMINAL HISTORIES/UNLAWFUL ACTS/DISCIPLINARY ACTION

All new license applicants and reciprocity candidates are required to provide fingerprint cards for criminal history checks with the State Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI). No applicant is approved to participate in the CLE until the Board has received and reviewed criminal background checks from both the DOJ and the FBI.

Questions on the application require the following disclosures:

- Disciplinary actions by other licensing boards.
- License denials by other licensing boards.
- Pending charges by other licensing agencies.
- Past voluntary surrenders of any healing arts license.
- Addiction to controlled substances.
- Federal, state, and/or local convictions (misdemeanors or felonies).

Affirmative answers to any one of the above disclosures require the submission of thorough explanations, including certified copies of all applicable court records. The criminal record reports received directly from the DOJ and the FBI assist Board staff in

verifying information provided by applicants. It should be noted that the DOJ reports subsequent criminal activities relating to licensees previously checked by the department, but the FBI does not.

Reciprocity applicants are also required to submit license histories from each state licensing agency from which they hold a professional license. These verification documents must be mailed directly to the Board from the licensing agencies and must contain the date of license issuance, license expiration date, and a listing of pending, current or past disciplinary actions.

Section 10(b) of the Act in part authorizes the Board to deny a license as follows:

- Employment of fraud or deception in applying for licensure or in passing an examination.
- Practicing under a false or assumed name or the impersonation of another chiropractor
- Conviction of a felony or any other offense substantially related to the practice of chiropractic.
- Habitual intemperance.
- Violation of the rules and regulations
- Any cause specified in the Act.

Board staff handles all potential license denials on a case-by-case basis, utilizing the services of the Attorney General's Office. Once Board staff concludes the internal investigations, applicants who are denied licensure because of any of the violations listed above are allowed to appeal the denial within 60 days through the administrative process. Applicants failing to meet the 60-day appeal deadline and applicants denied through the administrative process may reapply one year from the date of denial.

RECIPROCITY APPLICANTS

Section 5 of the Act and CCR Section 323 set forth requirements for reciprocal licensure. In order to assure that only competent practitioners are granted reciprocal licensure, applicants are required to have five years of chiropractic practice in order to reciprocate to California. Reciprocity applicants not meeting the five-year practice requirement may apply for licensure following the same procedure as new applicants; i.e., submitting a standard application and meeting all current requirements, including a check of the national database, CIN-BAD, to verify enforcement histories on all individuals applying for reciprocity licensure. As stated previously, the Board does not issue temporary licenses or permits. Thus, no reciprocity applicant may commence practice in California until all requirements for licensure have been met.

Since a majority of the states now require the national examination, the reciprocity application process is less daunting than when each state administered its own licensing examination based upon their own practice standards. Once the majority of chiropractors in the United States are licensed based upon the national examination, California's reciprocity requirements will become virtually obsolete.

LICENSING EXAMINATIONS

Examination Types

In 1996, the Board phased out the Board-administered licensing examination and replaced it with the NBCE examination, Parts I, II, III, IV and Physiotherapy, in addition to the CLE. As discussed earlier in this report, the NBCE examination is designed to test entry-level competency in all areas of chiropractic study, and the CLE is designed to measure applicants' knowledge of California laws and regulations pertaining to the practice of chiropractic. The Board contracts with Cooperative Personnel Services (CPS) to design and administer the CLE, which is conducted simultaneously in Northern and Southern California six times per year.

The NBCE examination measures didactic knowledge and practical and clinical competency. Low admission standards utilized by some chiropractic colleges, and the variation in educational quality in

these colleges make it unwise to simply rely upon graduation from a chiropractic college as the sole qualification for licensure. The knowledge and competency gage offered by the NBCE examination is absolutely essential to assure that California practitioners meet the standards established to best serve the public.

The CLE consists of a series of multiple choice questions constructed from the Board's regulations governing the practice of chiropractic. The exam is scored on a pass or fail basis, using the Angoff criterion referenced scoring methodology as applied by subject matter experts who are currently licensed chiropractors working under the guidance of CPS testing experts.

A job analysis of chiropractic in California was completed by CPS in 1994, the same year a nationwide job analysis was completed by the NBCE. Since the Board no longer administers its own practical examination, but relies on the five-part National examination results, it is not anticipated that another job analysis will be necessary.

National Examination Passage Rates

The table below provides a year-to-year comparison of NBCE examination results. The NBCE is unable to provide specific statistics for individuals seeking licensure in California because the

national testing agency has no way of determining the location of anticipated practice of its examinees.

THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS				
YEARS	NATION-WIDE		CALIFORNIA ONLY	
	TOTAL CANDIDATES	PASSAGE RATE	TOTAL CANDIDATES	PASSAGE RATE
1997	15,928	81.5%	N/A	N/A
1998	16,239	78.5%	N/A	N/A
1999	15,859	78.4%	N/A	N/A
2000	15,119	79.6%	N/A	N/A
2001	7,012**	79.3%**	N/A	N/A
**NOTES: March 2001 Administration Only				

California Law Examination Passage Rates

The table below reflects the number of candidates participating in the Board's jurisprudence examination over the past four fiscal years, the pass rate and the pass rate percentage. As the numbers reflect, participation in the CLE and pass rates have remained relatively stable.

CALIFORNIA LAW EXAMINATION				
	1997/98	1998/99	1999/00	2000/01
CANDIDATES	656	758	725	756
PASS RATE	580	683	654	710
PASS %	88%	90%	90%	94%

APPLICATION PROCESSING/LICENSE ISSUANCE

To be eligible to participate in the CLE, all required documents must be received by the Board, including results from the DOJ and FBI background check. Previously, application processing was hindered due to a DOJ and FBI response time anywhere from six to nine months. However, because of follow-up procedures instituted by the Board's Licensing Unit, the background check processing time has been decreased to between 33 and 67 days. It should be noted that on average, internal review of application documents takes approximately two working days, which includes review of the application document, college transcripts, national examination results and any necessary notification to applicants that deficiencies exist in their files.

The table below reflects the average days it takes to receive a license from application to actual license issuance, including participation in the CLE. Currently, the Board's testing service, CPS, requires 20 days to score exams, issue notification letters and print and issue licenses. The Board is currently negotiating with CPS to shorten the examination processing time to 14 days.

AVERAGE DAYS TO RECEIVE LICENSE	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Application to Examination	N/A	135	175	107
Examination to Issuance	N/A	21	17	20
Total Average Days	N/A	156	192	127

Continuing Education Verification

The Board conducts monthly random audits on renewing licensees, licensees holding inactive licenses requesting active status, licensees failing to renew in a timely manner, and licensees requesting restoration of forfeited or cancelled licenses. Exhibit 8:C is the Board's Restoration Application required to restore forfeited licenses.

In the past, the Board conducted approximately 10-14 continuing education audits per month. Currently, approximately 345 audits are conducted per month, which represents two (2) percent of the Board's licensing population.

Continuing education verifications must be submitted to the Board directly from the licensee, and must be in the form of a certificate of attendance that displays the date, location, Board-approval number of the course and the provider's signature. Any licensee not providing sufficient proof of continuing education will not be issued a valid California license to practice chiropractic.

Competency Requirements

Since its last review, the Board has taken great strides to assure competency and verify that continuing education is indeed fulfilled as a condition for renewal. For example, recent amendments to CCR Sections 355(b) & (c), effective April 18, 2001, provide that a chiropractor's license that is not renewed within three years of its expiration date will be cancelled. To restore cancelled licenses, individuals must submit a Restoration Application After Cancellation (Exhibit 8:D), pay a fee of twice the annual amount of the renewal fee (\$300.00), and provide evidence of Board-approved continuing education for each 12-month period in which the license was cancelled. Continuing education required to restore a cancelled license must be Board-approved and must be commenced and completed during the 12-month period immediately preceding the request for restoration.

The Board amended the curriculum requirements contained in CCR Sections 331.12.2-331.13. Effective May 16, 2001, applicants seeking licensure in California must furnish satisfactory proof of successful completion of the required 120 hours of physiotherapy course work and additional clinical training in which the theory, principles and use of the standard recognized physiotherapy equipment and procedures were demonstrated to and used by the applicant. Included in this regulation is the requirement of a minimum of thirty (30) patient office visits in which physiotherapy procedures are performed by the students on their own clinic patients. Physiotherapy course work may be taken at any Board-approved chiropractic college and need not be completed prior to graduation. However, such course work and clinical training must be regular credit course work and clinical training offered to matriculated students.

ENFORCEMENT ACTIVITY

ENFORCEMENT PROGRAM OVERVIEW

Complaint Source/Investigations

The Board has established a toll-free consumer complaint hotline where consumers can obtain information about the complaint process, request a Consumer Complaint form (Exhibit 9), or be

directed to the Board's web site, where complaint forms can be completed on-line, downloaded and mailed to the Board.

The vast majority of complaints against chiropractors are criminal convictions for insurance fraud. Sexual misconduct is also the basis of many complaints, and, most recently, there has been a spate of cases involving chiropractors using their licenses as prostitution fronts. The Board also deals with cases of gross negligence and/or incompetence, as well as excessive treatment violations. Because complaint processing and investigations are completed in a more timely manner, if sufficient evidence exists, more cases are being referred to the Attorney General's Office for formal disciplinary action.

Board staff processes the complaints, which the Board's Chiropractic Consultant and Enforcement Program Manager review. In cases where legal review is required, the Board utilizes its Deputy Attorney General liaison. Cases with sufficient evidence of violation that cannot be resolved by staff are referred to investigation. Following investigation, cases involving quality of care are referred to chiropractic expert reviewers for further evaluation. Upon conclusion of an investigation, depending on the evidence obtained, a decision is made as to whether to refer the case to the Attorney General for the filing of a formal accusation, issue a citation or close the case without a violation.

The following table provides a four-year history of complaints received by the Board:

NUMBER AND PERCENTAGE OF COMPLAINTS CLOSED, REFERRED FOR INVESTIGATION, TO ACCUSATION AND FOR DISCIPLINARY ACTION				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
COMPLAINTS RECEIVED	608	545	538	722
Complaints Closed	650	617	565	571
Referred for Investigation	66	79	48	74
Accusation Filed	25	61	46	50
Disciplinary Action	29	60	38	68

Reporting Partnerships

SB 1988 (2000), authored by Senator Speier, amended B&P Code Section 803.5 to add the requirement that court clerks and prosecutors report to the Chiropractic Board criminal cases brought against licensees. Various B&P Code sections require licensees, licensees' employers, and liability insurers to report to the Board civil cases brought against licensees, and judgments, arbitration awards and settlements over \$3,000 in malpractice cases. CCR Section 314 requires licensees to notify the Board of any violation of the Act or the rules and regulations by other licensed chiropractors. Failure to do so may result in disciplinary action. These various sources of information are intended to alert the Board to possible practice problems regarding a licensee so that appropriate investigations may be conducted to determine if disciplinary actions are warranted.

The Board has worked diligently since 1997 to increase communication between law enforcement agencies, other governmental regulatory agencies and the insurance industry, and has been successful in developing working relationships with the Department of Insurance, the Employment Development Department, District Attorney's Offices statewide, and multiple police and sheriffs' offices throughout

the state. The Board has also fostered the cooperation of special investigation units for the insurance industry to file their investigative findings as complaints against licensees. These partnerships have allowed the Board to step in immediately when notified of an arrest or conviction of a chiropractor to take appropriate action.

Interim Suspension and Temporary Restraining Orders

Pursuant to Penal Code Section 23, the Board will seek a suspension of a license through the criminal courts in criminal cases involving insurance fraud or the potential for serious ongoing harm to the public, including sexual misconduct. A Deputy Attorney General appears on behalf of the Board to furnish information and recommend that the court immediately suspend the chiropractic license pending the criminal proceedings or as a condition of criminal probation. This authority affords the Board a cost-effective and efficient means of obtaining the functional equivalent of an interim suspension order. The Board has been very successful in securing license suspensions through this process.

Complaint Data

The following complaint data table reflects that the majority of complaints received by the Board are from the public. The number of complaints received in FY 00/01 increased due to the enactment of the new citation regulation. Previously, cases with lesser violations (i.e., failure to notify the Board of an address change or name change, failure to post license, etc.) would have been closed with merit. Cases that involved advertising, failure to register referral services or continuing education violations may have received a cease and desist/warning letter. However, the Citation Program allows these violations to be acknowledged through the issuance of publicly disclosable citations.

The impact the Citation Program is having on the Board's enforcement efforts is reflected by the 42 percent decrease in cease and desist/warning letters from FY 1999/00 to FY 2000/01.

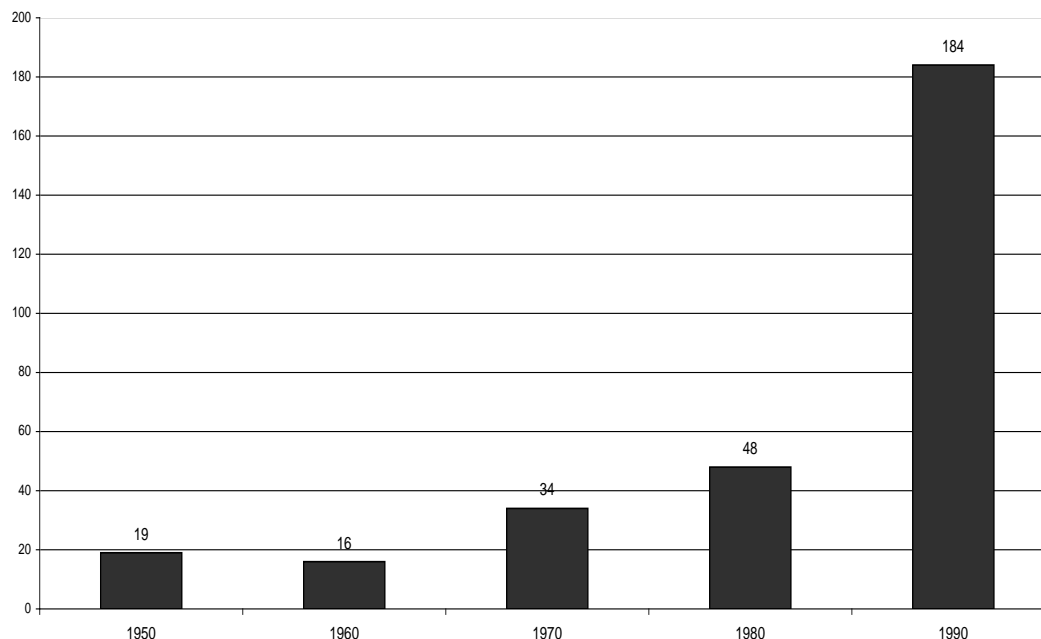
The table also reflects that the majority of complaints filed by type are for unprofessional conduct. This is based upon the fact that the majority of violations by licensees fall under the unprofessional conduct regulation (CCR 317), which includes gross negligence, repeated negligent acts, incompetence, excessive treatment, conviction of a crime, moral turpitude, administration of drugs or controlled substances, etc. Because the data-gathering program developed by the Department of Consumer Affairs does not provide a detailed breakdown for the unprofessional conduct category, Board staff is unable to provide more detailed information in this area.

COMPLAINT DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Inquiries	Total: N/A	Total: N/A	Total: N/A	Total: N/A
Complaints Received (Source)	Total: 608	Total: 545	Total: 538	Total: 722
Public	249	179	183	236
Licensee/Professional Groups	94	99	58	137
Governmental Agencies	164	167	129	288
Other	101	100	168	61
Complaints Filed (By Type)	Total: 608	Total: 545	Total: 538	Total: 722
Competence/Negligence	6	7	10	1
Unprofessional Conduct	518	454	456	637
Fraud	28	2	14	14
Sexual misconduct	5	14	12	10
Convicted of a crime	16	17	11	19
Unlicensed Activity	5	10	9	11
Non-jurisdictional	21	36	23	28
Other	9	5	3	2
Complaints Closed	Total: 650	Total: 617	Total: 565	Total: 571
Investigations Commenced	Total: 66	Total: 79	Total: 48	Total: 74
Compliance Actions	Total: 68	Total: 95	Total: 65	Total: 147
ISOs & TROs Issued	0	0	0	0
Citations and Fines*	0	0	0	108
Public Letter of Reprimand	0	1	0	1
Cease & Desist/Warning	68	94	65	38
Referred for Diversion	0	0	0	0
Compel Examination	0	0	0	0
Referred for Criminal Action	Total: 5	Total: 3	Total: 8	Total: 14
Referred to AG's Office	Total: 26	Total: 62	Total: 49	Total: 52
Accusations Filed	25	61	46	50
Accusations Withdrawn	0	0	2	1
Accusations Dismissed	1	1	1	1
Stipulated Settlements	Total: 14	Total: 28	Total: 17	Total: 31
Disciplinary Actions	Total: 29	Total: 60	Total: 38	Total: 68
Revocation	11	27	19	32
Voluntary Surrender	5	7	5	8
Suspension Only**	0	0	0	0
Probation with Suspension	4	14	10	11
Probation	9	12	4	14
Probationary License Issued***	0	0	0	3
Non-Adoption of Proposed Dec.	3	3	0	6
Probation Violations	Total: 2	Total: 2	Total: 2	Total: 4
Suspension or Probation	1	1	0	1
Revocation or Surrender	1	1	2	3
*NOTES: The Board does not have fine authority. The number of cease and desist/warning letters decreased in 2000/01 as a result of the Board's Citation Program. **The only instance where the Board seek a suspension is through Penal Code Section 23 or an ISO. ***The Board obtained authority to issue probationary licenses December 2, 1999.				

License Revocations and Surrenders

The bar graph below shows an approximate 400 percent increase in license revocations and surrenders from the 1980's through the 1990's. A review of the bar graph and the Complaint Data table on the previous page indicates that from 1990-1996, the Board sought and obtained 70 license revocations and/or surrenders, and from 1997-2001, the Board obtained 114 revocations and/or surrenders, 40 of them occurring in FY 2000-01 alone. This huge increase is attributed to the Board's decision to aggressively pursue nothing less than license revocation in disciplinary matters dealing with prostitution, sexual misconduct and fraud.

License Revocations and Surrenders (50-Year History)



Note: Data collected is in nine-year increments; i.e., 1950-1959, 1960-1969, etc.

CASE AGING DATA

Complaint Processing

The following table provides a four-year history of the average time it has taken the Board to process complaints, conduct investigations and complete prosecution:

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Complaint Processing	187	142	171	132
Investigations	373	368	390	502
Pre-Accusation*	166	305	171	153
Post-Accusation**	326	308	271	290
TOTAL AVERAGE DAYS***	1,052	1,123	1,003	1,077
*From completed investigation to formal charges being filed. **From formal charges filed to conclusion of disciplinary case. ***From date complaint received to date of final disposition of disciplinary case.				

The above statistics reflect that complaint and case processing over the past four fiscal years has decreased. However, the average time to complete investigations has increased. This increase is due to the fact that from July 1, 2000, to September 1, 2000, the Board did not have investigators to work its cases because of DOI's withdrawal from the Board's investigations contract. Additionally, the 45 incomplete case investigations returned to the Board from DOI were already aged because of DOI's staffing shortages and methods of case prioritizing.

The above statistics also reflect that the amount of time for the Attorney General to file accusations has decreased, but the amount of time it takes to actually prosecute a case to closure has remained about the same, approximately 300 days after an accusation is filed. The time involved after an accusation is filed can be unpredictable due to opposing counsels' requests for continuances for good cause. Although the Board most often objects to these continuances, historically administrative law judges tend to grant them. It should be noted that the total average amount of time from filing of a complaint to final closure has remained constant at approximately three years.

Investigations

The following table indicates that the number of investigations completed over the past three years has increased, as have the cases closed by the Attorney General. Board records also reflect a decrease in the age of these cases.

INVESTIGATIONS CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
90 Days	0	2	0	0	1%
180 Days	3	2	0	0	4%
1 Year	7	6	8	5	19%
2 Years	16	14	12	21	47%
3 Years	2	10	2	10	18%
Over 3 Years	2	1	3	5	8%
Total Cases Closed	34	34	25	41	
AG CASES CLOSED WITHIN:	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01	AVERAGE % CASES CLOSED
1 Year	5	28	13	21	41%
2 Years	5	10	19	31	39%
3 Years	2	3	6	7	11%
4 Years	0	2	1	0	2%
Over 4 Years	0	5	4	3	7%
Total Cases Closed	12	48	43	62	
Disciplinary Cases Pending	71	62	66	90	

Since the Board now contracts for its investigative services, it is anticipated that future years should reflect a decreased timeframe for investigation closures because Board staff can more readily monitor and prioritize caseloads.

CITATION AND FINE PROGRAM

Since its last review, the Board adopted a citation and fine regulation. However, the Office of Administrative Law (OAL), determined that Government Code Section 11145 prohibited the Board from assessing fines unless specifically authorized by statute. Therefore, the Board revised its regulation to seek citation authority only, which became effective October 2000 (Sections 390-390.6). As previously mentioned, the Board is pursuing fine authority through B&P Code Section 125.9 (SB 724).

The Board instituted its Citation Program on March 1, 2001, which provides for issuance of citations for 20 various regulatory violations, four B&P Code sections, and Health and Safety Code Section 123110. Since its implementation, the program has proven to be a vital enforcement tool for those cases identified as minor violations; i.e., failure to notify of address change, renewal and restoration, failure to post a license, etc. (See Issuance of Citations fact sheet – Exhibit 3.)

It is important to note that the 108 issued citations reflected in the table below represents only three months of program activity.

CITATIONS AND FINES	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Citations	N/A	N/A	0	108
Total Citations With Fines	N/A	N/A	N/A	N/A
Amount Assessed	N/A	N/A	N/A	N/A
Reduced, Withdrawn, Dismissed	N/A	N/A	0	22
Amount Collected	N/A	N/A	N/A	N/A

DIVERSION PROGRAM

Inasmuch as there is no statutory or regulatory mandate for a Board-sponsored diversion program, when a chiropractor is disciplined and substance abuse is a factor, the probationary terms and conditions require the licensee to participate in a rehabilitation program. Generally, probationers submit one or more rehabilitation programs for Board approval, after which they must enroll in the Board-approved program, comply with all program requirements, and provide proof of compliance to the Board. Additionally, probationers are required to sign releases allowing the Board to examine all information relevant to the terms of probation.

If probationers fail to comply with rehabilitation program requirements, or to complete the program prior to the end of the probation period, probation is automatically extended. All costs associated with any rehabilitation program are the responsibility of the licensee.

CONSUMER SATISFACTION SURVEY

In September 1998, the Board conducted a consumer satisfaction survey to determine the public's views on certain case handling parameters by the Board. Since that time, the Board has incorporated the survey into its complaint process, requesting complainants to complete surveys and return them to the Board either by mail or facsimile. The Board is currently in the process of developing an interactive form on its web site, allowing electronic transmittal directly to the Enforcement Unit.

Since 1997, the Board has sent out 1,275 surveys, of which 248 have been returned. The table below reflects that complainants have been consistently satisfied with knowing where to file their complaints. However, satisfaction consistently dropped in the outcome category. Keeping in mind that not all complaints are valid or warranted, typically, when complainants do not achieve a desired outcome, they do not hesitate to express their dissatisfaction.

CONSUMER SATISFACTION SURVEY RESULTS*				
QUESTIONS	Percent Satisfied by Fiscal Year			
# Surveys Mailed: 1,275 # Surveys Returned: 248 (19%)	1997	1998	1999	2000
1. Were you satisfied with knowing where to file a complaint and whom to contact?	79%	72%	87%	79%
2. When you initially contacted the Board, were you satisfied with the way you were treated and how your complaint was handled?	64%	66%	84%	79%
3. Were you satisfied with the information and advice you received on the handling of your complaint and any further action the Board would take?	57%	44%	66%	46%
4. Were you satisfied with the way the Board kept you informed about the status of your complaint?	57%	47%	63%	71%
5. Were you satisfied with the time it took to process your complaint and to investigate, settle, or prosecute your case?	59%	44%	71%	70%
6. Were you satisfied with the final outcome of your case?	77%	26%	46%	38%
7. Were you satisfied with the overall service provided by the Board?	64%	38%	67%	52%

PRECEDENT DECISION

In January 2001, pursuant to Government Code Section 11425.60, the Board designated as precedent specific sections contained in Decision No. N98-60 pertaining to the Board's accusation against a licensee for criminal convictions for insurance fraud (see Exhibit 10). This action significantly enhances the Board's ability to obtain consistent administrative rulings in cases dealing with criminal convictions for insurance fraud. Since the enactment of the new APA in 1997, only this Board, the Accountancy Board and the Dental Board of California have chosen to utilize this valuable administrative process tool.

ENFORCEMENT EXPENDITURES AND COST RECOVERY

Average Costs for Disciplinary Cases

The table below reflects a substantial reduction in investigative costs for FY 1999/00 to 2000/01. As discussed earlier, the Board was notified in late June 2000 that Division of Investigations (DOI) was understaffed and therefore unable to provide investigative services for the Board for FY 2000/2001. Board staff was unsuccessful in securing investigative services from any other state agency. Therefore, the Board entered into sole source contracts for investigative services on September 1, 2000. The incomplete 45 cases returned to the Board from DOI were redistributed to the Board's contract investigators and completed within 90 days. It should be noted that complex case investigations that DOI was completing in six months to a year, or more, were completed by the Board's contract investigators within 30-60 days. This shortened investigation time frame has allowed the Board to take action against law violators in a more expeditious and fiscally prudent manner.

AVERAGE COST PER CASE INVESTIGATED	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Investigation & Experts	\$162,584	\$180,811	\$161,782	\$72,446
Number of Cases Closed	34	34	25	41
Average Cost Per Case	\$4,782	\$5,318	\$6,471	\$1,766
AVERAGE COST PER CASE REFERRED TO AG	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Cost of Prosecution & Hearings	\$530,283	\$568,775	\$593,787	\$656,411
Number of Cases Referred	32	62	49	52
Average Cost Per Case	16,571	9,174	12,118	12,623
AVERAGE COST PER DISCIPLINARY CASE	\$21,353	\$14,492	\$18,589	\$14,389

As the above table reflects, the Board has experienced a dramatic reduction in investigative costs from FY 1999/00. The Board was paying DOI between \$95.00 to \$99.00 per hour for investigative services, whereas the Board's contract investigators are reimbursed \$35.00 per hour, plus expenses. The cost savings for investigative services are being used to offset the increase in Attorney General's fees.

The Board has experienced a sharp increase in the number of cases being filed with Superior Court, the Court of Appeals, and the California Supreme Court, which has resulted in rising Attorney General costs. For example, FY 1999/00, six Writ of Mandates were filed in Superior Court, four cases taken to the Court of Appeals and one case filed with the Supreme Court. Petitions for Writ of Mandate filings have increased by 50 percent in just one fiscal year. In addition to constantly increasing hourly fees, the types of appeals the Board is experiencing are also driving up Attorney General costs.

Cost Recovery Efforts

CCR Section 317.5 provides that disciplined chiropractors can be compelled to pay for the reasonable costs of investigation and enforcement of their cases. The table below reflects an increase in the number of cases where cost recovery has been ordered. The difference between the number of potential cases for recovery and the case recovery ordered is due to a high number of default decisions or revocations.

Historically, the Board seldom recoups costs from licenses that are revoked. Therefore, in April 2000, the Board applied for and was accepted in the Franchise Tax Board's (FTB) Interagency Intercept Collections program, which allows FTB to intercept tax refunds and lottery winnings on behalf of the Board for cost recovery reimbursements.

COST RECOVERY DATA	FY 1997/98	FY 1998/99	FY 1999/00	FY 2000/01
Total Enforcement Expenditures	\$692,867	\$749,586	\$755,569	\$728,857
# Potential Cases for Recovery*	29	60	38	68
# Cases Recovery Ordered	8	14	10	23
Amount of Cost Recovery Ordered	\$22,750	\$155,767	\$37,745	\$111,573
Amount Collected	\$18,000	\$31,000	\$20,321	\$64,213
*The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the License Practice Act.				

The Board requests cost recovery in every disciplinary action; however, in most cases, the Board will not require the payment of costs when a license is surrendered until a petition for reinstatement is submitted to the Board because it is more cost-effective than going to hearing. Also, administrative law judges do not always award the Board its costs or, in some circumstances, reduce the amount requested.

As discussed previously, the Board's cost recovery authority is being challenged in Zuckerman v. the Board of Chiropractic Examiners. If the California Supreme Court upholds the Court of Appeal decision to invalidate CCR Section 317.5, cost recovery provisions set forth in B&P Code Section 125.3 will most likely suffer the same challenge.

RESTITUTION PROVIDED TO CONSUMERS

The only provision the Board has for restitution to the consumer is through disciplinary action. The Board's Disciplinary Guidelines (Exhibit 13) include a term and condition for consumer restitution. Since the vast majority of cases resulting in Board discipline result from criminal

convictions for insurance fraud or sexual misconduct, licensees typically have been required to provide consumer restitution through the criminal justice system.

COMPLAINT DISCLOSURE POLICY

The Board discloses and provides information and documentation upon request and in accordance with the Public Information Act. Because complaints are considered allegations, the Board does not disclose initial complaint information to the public. If evidence supports the allegations through the complaint investigation phase and the case is referred to the Attorney General, information can then be released to the public.

In cases that have been investigated or mediated, complainants and licensees are notified in writing of the Board's findings at the conclusion of the investigation or mediation. However, general public disclosure can only occur when investigations have been referred to the Attorney General's Office for review. Accusations are available to the public once service is achieved, and final decisions are available to the public at the conclusion of a disciplinary action.

The table below delineates the type of information the Board makes available to the public:

TYPE OF INFORMATION PROVIDED	YES	NO
Complaint Filed		X
Citation	X	
Fine	N/A	N/A
Letter of Reprimand		X
Pending Investigation		X
Investigation Completed		X
Arbitration Decision	N/A	N/A
Referred to AG: Pre-Accusation	X	
Referred to AG: Post-Accusation	X	
Administrative Settlement Decision		X
Disciplinary Action Taken	X	
Civil Judgment	X	
Malpractice Decision	X	
Criminal Violation:	X	
Felony	X	
Misdemeanor		

CONSUMER OUTREACH, EDUCATION AND USE OF THE INTERNET

Unfortunately, as is the case with most licensing Boards, consumer contact occurs only when problems have already arisen between a complainant and a licensee. The Board has developed fact sheets not only for distribution to licensees as reminders of their responsibilities, but also to provide pertinent information to the public seeking advice in specific areas pertaining to chiropractic (Exhibit 4).

In an effort to promote consumer outreach, the Board recently established a toll-free “consumer complaint hotline”, which, hopefully, will encourage California citizens to reach out to the Board for information relating to the chiropractic profession and/or assistance in resolving complaints.

Internet Offerings/On-Line Business

With the launch of its web site in April 2000, the Board has assured easy public access to Board information and brought the Board up to par with other licensing boards. The public is able to access the Board’s mission, a history of the Board, a listing of current Board members, as well as fact sheets dealing with such issues as consumer complaints and how they are processed, advertising guidelines for chiropractors and notice regarding advertising complaints, information on pre-paid plans and health care reimbursement payers, and information on the chiropractic scope of practice.

Consumers may also verify chiropractic license status and obtain information on any current and past disciplinary actions against licensees. Also available for viewing are disciplinary report sheets from January 1998 to present.

The consumer and the Board’s licensees may also utilize the Board’s web site to keep abreast of any newly enacted regulations and regulations scheduled for public hearing, as well as regulations pending at the Office of Administrative Law. The web site also contains the entire Chiropractic Initiative Act and the California Code of Regulations, Title 16, Division 4, pertaining to the practice of chiropractic.

The Board is in the process of developing procedures by which it can provide on-line information relating to citations issued in accordance with CCR Sections 390-390.6.

Since the launch of its web site, the Board has seen a dramatic increase in on-line communications with consumers and licensees. Both groups utilize the site to pose questions and requests to Board staff relating to chiropractic issues. For instance, consumers contact the web master to inquire about license verification and disciplinary information, how to use the site or clarification of information contained therein. Consumers reluctant to file complaints use the site to discuss the issues they may be grappling with. Although the complaint form is interactive and downloadable, the Board anticipates increased web activity when its interactive form can be filed directly with the Board on-line.

Licensees utilize the site to obtain information on current Board-approved continuing education providers and courses, to verify their own license status and to communicate with the Board regarding questions pertaining to the practice of chiropractic and the current law.

The Board's web site is also heavily used by insurance companies to verify license status for insurance reimbursement purposes, and insurance investigators utilize the site when working on specific claim issues.

The Board's web site offers information and instructions on applying for licensure. However, the Board does not offer on-line application filings or accept on-line address changes, etc. Since criminal history information is acquired through the use of fingerprint cards submitted with the application form, it is the Board's contention that the application process cannot be completed on-line. The Board does not accept address changes on-line due to the sensitive nature of the address of record and the requirement of an original signature.

On-Line Examinations

The Board does not currently offer on-line administration of its CLE examination. As its Strategic Plan points out, consideration to implement computer-assisted administration of the CLE is on hold pending cost analysis and administration evaluation.

The Board believes that computer-assisted examining techniques is very feasible, and is currently in discussions with the DCA's Examination Resources Unit to participate in its current computer-assisted examination process.

Improved Services Through Internet Use

As discussed throughout this report, the Board is endeavoring to promote more interaction with the consumer and its licensees through its web site. The Board is seriously looking at electronic filings of consumer complaint forms and satisfaction survey forms. In response to the Governor's Executive Order D-17-00, the Board is in consultation with the Enterprise Business Office to determine how on-line license renewal capabilities can be offered to its licensees.

The Board is also reviewing the successes of other licensing entities with regard to on-line license application filings. It is anticipated that the Board will be in a position to determine how this process will best serve its program by January 2002. Hopefully, the Board will be in a position to accept on-line license applications by July 1, 2002.

Practices Outside California's Traditional Marketplace

The chiropractic scope of practice (CCR Section 302) assures that licensees do not venture outside California's traditional marketplace. Whether chiropractors serve as "sports practitioners", insurance consultants retained to review and determine appropriate billings for chiropractic services, or as ergonomic consultants for private business, their scope of practice never allows them to deviate from the traditional marketplace.

On-Line Marketing and Advice Practice

The Board is aware that many chiropractors are using web sites to market their practices. Although CCR Sections 311 and 317, together with B&P Code Sections 651 and 17500 provide the necessary authority to regulate on-line advertising practices and unprofessional conduct due to on-line practice, the challenge facing the Board is detection of such activities. The Board has discovered situations where the services being advertised fall outside the scope of chiropractic practice through the complaint process or purely by accident through its own on-line searches. In these situations, the Board has taken immediate action to stop the illegal advertising activity through cease and desist letters and the issuance of citations.

The Board has no first-hand knowledge of specific examples of chiropractic treatment advice being offered on-line, and unless a complaint is filed or the Board otherwise learns of this type of activity, no disciplinary action can be initiated.

Internet Business Practice Regulation

The Board's current regulations address all issues of Internet practice. CCR Section 311 and B&P Code Sections 651 and 17500 allow the Board to impose disciplinary measures for Internet advertising violations, and CCR Section 317 allows the imposition of discipline for unprofessional conduct associated with Internet activities.

The Board strongly believes that Internet activities must be regulated. Thus, in conjunction with its review of the Act and regulations over the next year, consideration will be given to developing regulations that can effectively deal with inappropriate or illegal Internet business practices. Also, the Board is in the process of amending its Disciplinary Guidelines to assure disciplinary decisions address Internet activities at the time of license surrender, revocation or suspension.

PART 2.

Board's Response to Issues Identified And Former Recommendations Made by the Joint Legislative Sunset Review Committee

ISSUE #1. Should the licensing and regulation of Doctors of Chiropractic be continued?

The Joint Committee and the Department of Consumer Affairs (DCA) strongly recommended the continued state regulation of the chiropractic profession. The Board agrees that continued regulation of chiropractors ensures that they possess the necessary knowledge, skills and abilities to provide care without causing harm to the public. Additionally, the Board also agrees that deregulating the profession would bar enforcement action against unsafe, fraudulent, and/or incompetent activities.

ISSUE #2. Should the Board be continued, or its role be limited to an advisory body and the remaining functions be transferred to the Department of Consumer Affairs?

The Joint Committee and DCA agreed that retaining the Board as the agency responsible for regulating the practice of chiropractic is in the best interest of the public, and recommended a re-review of the Board within a two-year period to assure that past problems with management and operations have been rectified.

The Joint Committee and DCA expressed concern regarding past staff and management deficiencies, and that the Board was not taking an active role in assuring discipline of its licensees. Also, both entities indicated a need for setting appropriate practice standards for the profession.

The Board welcomes this opportunity to display the vast improvements in management and operations efforts over the past five years, which should satisfy the concerns of the Joint Committee and DCA. All management and operation issues have been addressed and corrected. A sampling of the areas of improvement since the Board's last review by the Joint Committee, which are discussed in detail in Part 1 of this report, are as follows:

- New Executive Director hired March 2000.

- Acquisition of adequate office space to house growing staff and program operations secured April 2001.
- Filled all budgeted positions effective July 1, 2001, thus eliminating workload backlogs in the Enforcement and Licensing Units.
- Developed and launched a consumer-oriented web site.
- Developed and implemented a computerized cost recovery tracking system.
- Developed and implemented on-line access to Secretary of State's corporation records to facilitate registration of chiropractic corporations.
- Designed and implemented in-house procedures for tracking historical corporation data and cross-referencing license histories.
- Aggressively pursued regulatory enhancements (see Part 1 of this report; Exhibit 5), including, but not limited to:
 - ◆ establishment of a citation program;
 - ◆ establishment of specific disciplinary penalties dealing with fraud convictions;
 - ◆ establishment of specific disciplinary penalties dealing with unlicensed practice;
 - ◆ broadening college curriculum requirements; and
 - ◆ broadening continuing education course and provider requirements; etc.
- Pursued and secured inclusion in legislation (SB 724) to include the Board in the following Business and Professions Code sections:
 - ◆ Section 125.3 – Cost Recovery
 - ◆ Section 125.9 – Administrative Fine Authority
 - ◆ Section 650 – Unlawful Referrals/Kickbacks

Over the past 18 months, the Board seriously and diligently addressed the concerns of the Joint Committee and DCA regarding necessary program enhancements. The Board takes great pride in the tremendous progress it has made in such a short period of time. The Board also realizes that the task is not yet complete, and is in the process of undertaking a complete review of its Initiative Act and regulations in order to identify outdated laws and enhance the Board's regulatory authority to satisfy the Joint Committee's concerns.

As discussed in detail in Part I of this report, the Board currently lacks the quorum necessary to carry motions and adopt resolutions and regulations. Once the Board's vacancies are filled, it intends to vigorously pursue program enhancements through the Initiative Act and the legislative and regulatory processes.

ISSUE #3. Should the Board be placed under the jurisdiction of the Department of Consumer Affairs?

During the Board's last sunset review, the Joint Committee recommended that the "status quo" be maintained and that the Board not be placed under the jurisdiction of the DCA. However, it is apparent that the Joint Committee remains concerned that because of its unique creation through the initiative process, the Board appears to lack oversight or administrative process review within the executive branch. In fact, the Joint Committee commented about the number of provisions under the Business and Professions Code that do not apply to the Board and the administrative economies of scale available to other licensing entities under the jurisdiction of DCA. The Joint Committee also pointed out that there is precedence for the Board being under DCA's jurisdiction because it was voluntarily housed within the Department from the 1940's to the 1970's.

In response to the Joint Committee's comments and concerns encompassed within Issue 3, the Board offers the following:

Contrary to the Joint Committee's belief that the Board lacks oversight or administrative process review, the following entities may at any time exercise their powers and authority over the Board and or its activities through various processes:

- Governor's Office through the appointments process and constituent affairs activities;
- Department of Finance through the budget approval process;
- Bureau of State Audits through its nonpartisan assessment of the Board's financial and operational activities;
- Office of Administrative Law through legal review of proposed regulatory actions;
- Office of the Attorney General through guidance and oversight of the Board's legal activities;
- Joint Legislative Sunset Review Committee through periodic overall program review; and,
- Center for Public Interest Law through its nonpartisan public interest watchdog activities.

Regarding the Joint Committee's reference to the Board's precedent-setting previous voluntary inclusion within DCA, Board Resolution No. 1-76 (Exhibit 11:A) dated March 1, 1976, removing itself,

withdrawing and declaring its independence from DCA cites very serious allegations warranting such drastic action by the Board. The Resolution points to conflicts of interest and clear bias and

prejudice against the Board of Chiropractic Examiners by DCA, the Board of Medical Examiners, and the branch of the Attorney General's Office representing the Board on DCA's behalf at that time.

The industry and the Board strongly believe that the bias and prejudice against the profession still lingers within certain entities and has the potential for influencing DCA to the detriment of the Board, the consumer, and the profession. Since the Board reasserted its independence of DCA in 1976, discord continues to exist between the professions that can potentially lead to a direct influence to patient access of chiropractic services. Examples of such conflict include the following:

- CMA v. Board of Chiropractic Examiners, et al. – A court action in the mid-1980s commenced when the Board adopted revisions to CCR Section 302, which set forth, among other things, the Board's position on the manner in which physical therapy procedures may be used by licensed chiropractors. As a result, the California Chapter of the American Physical Therapy Association and the Medical Board filed a lawsuit seeking to negate the effects of the physical therapy aspects of the newly enacted regulation. Following several years of litigation, the matter was resolved through superior court settlement in the CMA case, which effectuated the 1991 amendment to CCR Section 302, which clarifies the use of physical therapy in conjunction with chiropractic. (See Exhibit 11:B.)
- A 1998 lawsuit filed by the American Chiropractic Association against the Federal Health Care Finance Administration to block proposed regulations that would effectively eliminate the provision of chiropractic services by chiropractors under Medicare. To date, this lawsuit has not been resolved.

These examples of litigation occurring since the Board removed itself from the administrative oversight of DCA are illustrative of the continued resistance of certain entities to the fact that the chiropractic profession continues to move into the mainstream of today's healthcare system.

It should also be noted that in the mid-1940s, Board staff consisted of three full-time employees, who handled all Board operations. It's no wonder that the three-person Board office may have felt it needed the administrative economies of scale available to other licensing entities under the jurisdiction of DCA. By contrast, today the Board has a staff of 14 full-time highly qualified employees and contracts with the Department of General Services to handle the basic services DCA offers its client agencies.

The Board acquired its legal liaison through special arrangements with the Attorney General's Office. The Deputy Attorney General assigned to the Board serves the same function as the DCA staff attorneys assigned to specific boards under the DCA umbrella. However, the Board derives one very important added benefit from its arrangement with the Attorney General's Office for its legal liaison: **the legal liaison's first hand knowledge of every case referred to the Attorney**

General for disciplinary action. This legal liaison also litigates numerous Board cases assigned to the Sacramento District Office.

The Board's legal liaison is available for consultation in every aspect of Board business, such as:

- Board and Committee meeting activities;
- jurisprudence examination question development;
- regulation and legislation review;
- consumer complaint review;
- applicant criminal history review; and
- legal review of proposed disciplinary proceedings.

There is no doubt whatsoever that this Board's administrative economies of scale are not impacted because of its separation from DCA.

ISSUE #4. Should all current and future general provisions of the Business and Professions Code that apply to all other health-related licensing boards under DCA apply to this Board?

The Joint Committee recommended that the Business and Professions Code be amended so that the Board's regulatory program will be subject to the same consumer protection requirements as all other health practitioner licensing boards. This Board wholeheartedly agrees with the Joint Committee in this regard, providing that the profession's scope of practice is not inhibited. In fact, over the last 18 months the Board has aggressively pursued regulatory and legislative enhancements to achieve this end.

A sampling of California codes referencing the Board or the Act is as follows:

- Government Code;
- Business and Professions Code;
- Penal Code;
- Labor Code;
- Corporations Code;
- Health and Safety Code;
- Insurance Code;
- Civil Code;
- Welfare and Institutions Code; and,
- Code of Civil Procedure

In order to assure consistent awareness of regulatory or legislative activities that might inadvertently omit reference to the Board or the Chiropractic Initiative Act, the Board sought and gained budget authority to add staff specifically delegated to handle the Board's regulatory and legislative efforts. The primary responsibility of this new position will be to track legislation of interest to this Board

and to work with the Board's Regulation Review Committee in reviewing the Act and regulations to assure compliance with all other health practitioner boards.

ISSUE #5. Are there still management and practice issues that the Board needs to address?

In this Issue, the Joint Committee reiterated the operation and management concerns set forth in Issue #2 above. The Board again stresses that all management and operation issues have been rectified. The Board has an active citation program and will have fine authority when SB 724 is enacted. Consumer outreach was immeasurably enhanced when the Board launched its web site, which provides on-line license and disciplinary activity verification, as well as downloadable consumer complaint and survey forms. The Board also provides a toll free consumer complaint hotline number, a tool intended to assist the public in conveniently contacting the Board regarding consumer complaints.

Also, through proper budget planning and monitoring, the Board has not experienced a budget shortfall since the mid-1990s. In fact, through diligent efforts in budget monitoring, the Board has managed to meet its increased enforcement and licensing responsibilities, as well as maintain a high staff morale by providing adequate office space and necessary equipment to get the job done with minimal budget augmentations.

In this issue, the Joint Committee also specified a number of areas it wished the Board to address:

- The appropriate use of specialty titles or certifications by chiropractors.

Response

The option for chiropractors to obtain additional postgraduate education in specific subjects, such as nutrition, neurology, radiology and orthopedics, has been offered through accredited chiropractic colleges for the past 4-5 decades. As these courses expanded, curriculum was developed through the counsels of the American Chiropractic Association for three-year programs leading to Diplomate or specialty status. The testing of these individuals is overseen by the respective specialty board organizations, such as the American Board of Chiropractic Orthopedics and the American Board of Chiropractic Radiology. Chiropractors who obtain specialty status in these and other areas provide patients, chiropractors, law enforcement and industry with additional insights and consultations in their respective area of expertise.

The use of chiropractic specialists is routinely seen in areas such as the California Workers Compensation system. The Industrial Medical Council (IMC) of the Department of Industrial Relations currently recognizes chiropractic specialties in the fields of orthopedics, neurology, radiology, sports medicine and rehabilitation for their Qualified Medical Evaluators system. This recognition is pursuant to the Labor Code, Section 12, which specifies that the IMC shall recognize chiropractic diplomate boards whose programs are taught by CCE accredited colleges.

The Board is aware of concerns that the public may be confused by the specialty designations recognized in the chiropractic profession. It has not been the Board's experience, however, that such confusion exists for the public because there is no record of consumer complaints arising from such potential confusion.

- The use of certain treatment, experimental devices or procedures and "alternative" products.

Response

In general, the Board allows the practice of chiropractic as it is taught in CCE-accredited, Board-approved chiropractic colleges, as well as required continuing education hours on techniques that are taught as core curriculum in Board-approved chiropractic colleges. The Board also allows the use of treatment, devices or procedures that are taught in Board-approved chiropractic colleges. When certain patient treatments are not subject to treatment by chiropractic methods or techniques, CCR Section 317(v) requires chiropractors to refer patients to licensed health care providers who can provide the appropriate management of a patient's physical or medical condition, disease or injury within their scope of practice. The Board does not allow use of treatment, experimental devices or procedures that have been prohibited by the Food and Drug Administration.

- The use of x-ray equipment by chiropractors.

Response

CCR Section 302(a)(6) specifically authorizes chiropractors to use x-ray and thermography equipment for diagnostic purposes only, which is based on the standard college curriculum of x-ray use and diagnosis required in all chiropractic colleges under CCR Section 331.12.2. All applicants are tested in the area of x-ray interpretation and diagnosis, and required to obtain a certificate to operate x-ray machines from the Department of Health Services. Chiropractors are strictly prohibited from using x-ray equipment for the treatment of any condition. Excessive use of x-ray procedures is considered unprofessional conduct under section 317(d) and may result in disciplinary action against the doctor.

- Clarification on use of physical therapy techniques by chiropractors.

Response

Instruction in physical therapy is required in Section 5 of the Act, and 120 hours of physical therapy training is required under CCR Sections 331.12.1 and 331.12.2. Practical clinical experience is required of all applicants under CCR Section 331.12.1, and the scope of practice, as outlined in CCR Section 302(a)(2), allows chiropractors to use physical therapy techniques in the course of chiropractic manipulations/adjustments. CCR Section 302(a)(7) does not allow chiropractors to hold themselves out as being licensed as anything other than a chiropractor or holding any other healing arts license. This section also prohibits chiropractors from practicing physical therapy or using the term “physical therapy” in advertising unless they hold another such license. Excessive use of treatment procedures, such as physical therapy techniques, is considered unprofessional conduct under CCR Section 317(d).

- Qualification of chiropractors to perform school physicals.

Response

Section 5 of the Act and CCR Section 331.12.1 set forth minimum education requirements to qualify for licensure in California. The 4,400-hours in required coursework includes laboratory teaching in human dissection, histology, chemistry, physiology, bacteriology, pathology, x-ray and physiotherapy. CCR Section 331.12.1 specifically requires 720 hours of the 4,400 hours of education to be in the subject of examination and diagnosis.

All candidates are tested in the subject of physical examination and diagnosis in Parts III and IV of the NBCE examination. The ability to examine and diagnose patients of all ages is necessary because patients of all ages have the ability to directly access chiropractic care without referral from any other health care provider.

It is the Board’s position that all California chiropractors are under the professional obligation to examine their patients and to determine when a condition requires referral to other qualified health care practitioners. This obligation is present in all patients, regardless of age, and failure to do so constitutes unprofessional conduct and may result in disciplinary action against the license.

The Joint Committee’s request for clarification pertaining to a chiropractor’s ability to perform school physicals is simple to address. Chiropractors are not only trained and qualified to conduct such physicals, but are also authorized to do so within their scope of practice. In fact, certain codes and regulations specify that doctors of chiropractic can perform physical

examinations. Thus, in the case of school physicals, it seems to be left to the discretion of individual school districts to determine the types of health practitioner physical examination certifications they will deny or accept.

- Authority to deal with unlicensed chiropractic practice.

Response

The majority of cases of unlicensed practice coming to the Board's attention are directly attributable to individuals waiting to obtain a California license. The Board does have authority to deal with unlicensed chiropractic practice as it pertains to applicants -- through license denial. The Board would be hard-pressed financially to attempt to investigate unlicensed individuals with no prosecution authority. However, since unlicensed practice of chiropractic is a misdemeanor in California, the Board diligently refers all complaints of unlicensed practice to local district attorneys.

ISSUE #6. Are there still changes or improvement necessary to enhance the Board's Enforcement Program?

Although the Joint Committee applauded the Board's significant efforts to improve its enforcement program since 1996, it still offered suggestions for further improvements, and recommended adoption of the best practices of other boards having strong enforcement programs, including the following:

Issue

- Reengineer its enforcement process to shorten the time frame for investigations.

Response

The highest hurdle the Board faced in shortening its time frame for investigations was the workload and priorities of the Division of Investigations (DOI). On average, DOI investigations took anywhere from 6 months to a year and a half to complete. Also, the Board had no control whatsoever over the priority given to its cases, regardless of the severity of the violation.

In mid-June 2000, just days prior to submission of a new fiscal year contract with DOI for investigative services, the Board was informed that effective July 1, 2000, DOI would no longer handle the Board's enforcement investigations because of DOI's decreasing staffing levels. Board staff immediately canvassed other state agencies (the California Highway Patrol and the Departments of Health Services and Insurance) in an effort to ensure complaint investigations would continue without interruption. Unfortunately, each agency was facing its own workload challenges and could not absorb the Board's cases.

As an emergency measure, the Board put out the message that it was in dire need of investigative services. Through its relationships with other state agencies and the National Insurance Crime Bureau, the Board identified highly qualified individuals interested in contracting out their

investigative skills. As of September 1, 2000, the Board had retrieved all its cases from DOI and reassigned them to contract investigators completely removed from other Board business. Currently, the Board has entered into sole source contracts with three private investigators (one in Southern California, one in San Francisco and one in Sacramento).

All of the investigators on contract with the Board are retired law enforcement officials with extensive experience in investigations. The Board's Chiropractic Consultant and Attorney General liaison assist these individuals in acquiring the necessary knowledge of the laws and regulations governing the chiropractic profession.

Part 1 of this report discusses in depth the improvements experienced by the Board since DOI chose to terminate its investigative services with the Board.

Issue

- Establish mandatory reporting procedures with courts, insurance carriers and hospitals on civil actions brought against chiropractors.

Response

A recent amendment to Business and Professions Code Section 803.5 requires court clerks and prosecutors to report criminal cases brought against licensees to the Board. Although Section 803.5 mandates reporting procedures, the Board cannot assume that each jurisdiction will follow the procedures set forth therein. Thus, in an effort to foster reporting cooperation, the Board has endeavored to establish relationships with district attorneys, insurance company special investigators and law enforcement agencies statewide. This type of personal interaction has proven successful in developing and maintaining relationships that encourage criminal case reporting on a consistent basis. The Board developed the reporting form contained in Exhibit 12 to assist in the reporting process.

Issue

- Clarify what authority the Board has to inspect chiropractic offices to assure they meet health and safety standards and are adhering to appropriate practice standards of the profession.

Response

Currently, the Board has no authority to inspect chiropractic offices. Although the Board itself does not possess inspection authority, it does rely on local governmental entities such as law enforcement and city or county health organizations to report findings warranting concern for the health and safety of the public. The Board is proactive in following up on these complaints through its contract investigators.

ISSUE #7. Use excess fund reserve to improve Board's programs?

In order to address the Joint Committee's recommendations to seek appropriate spending authority for an increase in staff to improve its licensing and enforcement programs, the Board sought the following budget enhancements for FY 2001/02:

- Enforcement staff augmentation for one position to oversee and coordinate the Board's Citation Program, and one position to perform support duties vital to the Board's enforcement program. Although the Department of Finance denied this budget change proposal, the Board intends to seek budget authority in this area for fiscal year 2002/03.
- Information technology expert to oversee and coordinate all web site enhancements and maintenance, as well provide hands on development and maintenance of all internal databases. It was anticipated that this position would also oversee all hardware and software evaluations and enhancements, and serve as the Board's representative to DOIT. The Department of Finance denied this budget change proposal. However the Department did authorize an augmentation of \$50,000 to contract with private vendors for information technology assistance for fiscal year 2001/02. The Board intends to seek budget authority in this area for fiscal year 2002/03.
- Temporary help augmentation to assist in hiring retired annuitants to conduct Board investigations and to supplement partial limited term office technician and office assistant positions to handle receptionist and continuing education duties and the majority of the Board's filing. The Department of Finance denied this budget change proposal. Since the Board has been successful in contracting its investigative services out to private vendors, it does not intend to seek temporary help augmentation for investigators. However, the Board intends to seek budget authority to increase its partial limited term positions for fiscal year 2002/03.
- Administrative staff augmentation of two positions; one to coordinate and oversee the Board's legislative and regulatory efforts and one to perform general clerical duties vital to the Board's operations. The Department of Finance approved one position to handle regulations and legislative matters, but denied the clerical support position.
- Out-of-state travel augmentation to allow Board staff to visit out-of-state Board-approved chiropractic colleges and to diversify participation in regulatory association activities held out side California. The Department of Finance denied this budget augmentation; however, the Board intends to seek budget authority to increase its out-of-state travel funding for fiscal year 2002/03.

In addition to recommending that the Board seek spending authority for an increase in staff to improve its operations, the Joint Committee also recommended that once program enhancements have taken place, the Board should consider reducing license renewal fees for a limited time. The Board wholeheartedly agrees that this course of action would be appropriate, and will conduct a

fund analysis following its endeavors to secure funding authority for program enhancements to determine the type and length of fee reductions appropriate to address the excess fund reserve.

ISSUE #8. Change composition of the Board?

The Board does not disagree with the Joint Committee's recommendation that there should be two additional public members added to the Board, bringing the composition to 5 professional members and 4 public members, for a total of 9 members. The Board also does not take issue with the recommendation that the two additional public members be appointed by the Senate and the Assembly, respectively.

The Board will assist the Joint Committee in any way it can in seeking the composition change through the Initiative Act process.

3.

BACKGROUND PAPER FOR 2001 PUBLIC HEARING

PRIOR SUNSET REVIEW: The Board of Chiropractic Examiners (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) two years ago (1999-2000). The JLSRC and the Department of Consumer Affairs (DCA) identified a number of issues and problem areas concerning this Board and directed the Board to address these concerns and implement a number of changes as recommended. Some of these included: (1) A review of the Board within two years (2001) to assure that past problems with the management and operation of the Board were rectified. (2) Amend the Business and Professions Code so that, in all respects, this regulatory program will be subject to the same consumer protection requirements as all other health practitioner licensing boards, and that the Board should also pass regulations to implement these changes. If the Board is unable to adopt certain requirements, then it should seek the authority necessary under the Initiative Act to effect these changes. (3) The Board and staff should continue its effort to improve on the efficiency and operation of the management of this Board. It should conduct a thorough review of all regulations and codify those that have been challenged and strengthen those that are considered weak. The Board should also consider trends in the industry and establish proactive policies and regulations to address new enforcement challenges. (4) The Board should adopt the best practices of other boards that have strong enforcement programs, such as streamlining complaint handling of cases, inspection of Chiropractic offices, better coordination with the Division of Investigation and Attorney General's office on case investigation and prosecution, and enhanced disciplinary authority for unprofessional conduct or other violations of the law by licensed chiropractors. (5) The Board should seek appropriate spending authority for an increase in staff to improve its licensing and enforcement programs, and consider reducing license renewal fees for a limited time if its budgetary reserves exceed six months. (6) Amend the initiative act so that two additional public members should be added to the Board, bringing the Board's composition to 5 professional members and 4 public members (nine total members) One public member should be appointed by the Senate and one public member by the Assembly.

In September 2001, the Board submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. The Board addressed several issues presented by the JLSRC and Legislature over the past two years and also implemented some of the following changes pursuant to legislation and on its own initiative since its last review. This included:

- In March 2000, the Board hired a new Executive Director to continue the aggressive program enhancements begun in 1996. In April 2001, after a long site search, the Board moved its office operations to a location that suitably accommodates program operations and current staffing levels that has increased 57 percent in the past five years. As of July 2001, all budgeted positions were filled, meaning that all workload backlogs have been eliminated and program operations are operating at maximum levels. As the Board is now required to contract out for its investigative services, the timeframe for investigation completion has shortened considerably.
- The Board launched its web site in April 2000. Consumers can now verify license status and check disciplinary actions on-line, as well as access consumer complaint processing information. Licensees have immediate access to the Chiropractic Initiative Act, the regulations governing their profession, and up-to-date information of Board-approved continuing education providers and courses.
- The Board has established a toll-free consumer complaint hotline whereby the public can seek assistance in reporting suspect practice and complaints.
- The Board has developed and launched a computerized cost recovery tracking system and acquired on-line access to the Secretary of State's corporation records to facilitate registration of chiropractic corporations.
- The Board's Licensing Unit has revised and updated its various forms and applications, i.e., notices for renewal, initial license and reciprocity applications, as well as its applications for corporation registration and satellite offices.
- The Board has been aggressively pursuing regulatory enhancements to broaden its enforcement and licensing tools, as well as increasing its curriculum and continuing education requirements. The Board has also successfully sought inclusion in legislation designed to bring the Board into line with other health practitioner licensing Boards.

Beginning on the next page are a number of unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are also questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

CURRENT SUNSET REVIEW ISSUES

ISSUE #1: Should the Legislature be permitted to include Chiropractors in statutes that generally deal with all other health-related boards equally regarding issues other than scope of practice? Similarly, should the Chiropractic Act be codified in statute?

Question #1 for the Board: *Specifically, should all current and future general provisions of the Business and Professions Code that (i) apply to all other health-related licensing boards under*

DCA and (ii) deal with administrative (not scope of practice) issues, apply to this Board without a vote of the electorate? Please indicate the extent to which the Board will support the changes in the Chiropractic initiatives necessary to accomplish parity of treatment in the future without a vote of the electorate. As well, will the Board support Legislative codification of the Chiropractic Act?

Background: None of the approximately eight chiropractic initiatives permit a significant role for legislative amendment. For example, none employ the familiar two-thirds vote/further the purpose model seen in most modern initiatives. Instead, the only role permitted for the Legislature, where amending these initiatives is concerned, is the ability to raise fees and set per diem. Thus, unlike the state's 32 other professional licensing programs that operate as semi-independent units of the Department of Consumer Affairs (Department), the Chiropractic Board is completely independent of Department oversight. Nor is it subject to direct legislative authority. The Center for Public Interest Law (CPIL) has recommended that this Board, along with the Osteopathic Board, be treated the same as other licensing boards under the Department (at minimum where administrative issues are concerned), and that their initiative provisions be codified and subject to change or revision by the Legislature without having to seek a vote of the electorate.

Article 2, section 10(c) of the California Constitution forbids the Legislature from amending initiative statutes if the initiative does not permit such amendment. In essence, what this means is that if the electorate enacts certain statutes without providing a role for the Legislature, the Legislature may not enact a statute that qualifies as an amendment to the initiative statute. What constitutes an amendment to a statute -- including an initiative statute -- is construed quite broadly. In essence, a legislatively enacted statute amends an initiative statute if it adds to or takes away from the initiative statute, or interferes with its operation as the electorate intended the statute to operate. Note that it does not matter if the statute improves upon or expands the electorate's initiative statute. When the electorate initiates, and has permitted no role for the Legislature, the Legislature is powerless to improve upon an initiative statute even if the sponsors of the initiative (and presumably the electorate) would welcome the addition.

For all these reasons, if there is proposed a statute addressing board administration that should apply equally to the Chiropractic Board and all other boards, that statute cannot become effective as to the Chiropractic Board without an expensive and time consuming vote of the electorate. Where such ministerial, non-scope of practice issues can be addressed by legislation that applies equally to all boards, it is more efficient to have it apply to the Board without the extra step of a vote. Additionally, codification of the Act and supporting regulations would protect the Board against legal challenges questioning their authority. However, to permit such a role for the Legislature where non scope of practice issues are concerned, the electorate must first enact a statute permitting such a role; a statute that would amend the Chiropractic Initiative of 1922.

ISSUE #2: Should the composition of the Board be changed?

Question #2 for the Board: *How would restructuring the composition of the Board to achieve greater public representation affect its mission? Will the Board support legislative efforts to increase public membership?*

Background: The Board's current composition of five professional and two public members may not be in the best interest of consumer protection. Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's primary purpose is to protect the public and there is a perception that this Board has been less than proactive in performing its consumer protection role, increasing the public's representation on this Board assures the public that the profession's interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the Department's recommendations regarding other boards that have undergone sunset review.

In the 2000 Board review, when this issue was brought up, the Board did not disagree with the Joint Committee's recommendation that there should be two additional public members added to the Board, bringing the composition to 5 professional members and 4 public members, for a total of 9 members. The Board also did not take issue with the recommendation that the two additional public members be appointed by the Senate and the Assembly, respectively. The Board agreed to assist the Joint Committee in any way it can in seeking the composition change through the Initiative Act process.

ISSUE #3: There are numerous vacancies on this Board which prevent them from having a quorum and taking specific action as needed?

Question #3 for the Board: *What problems have a lack of quorum caused for the Board?*

Background: The composition of the Board is governed by Section 1 of the Chiropractic Initiative Act, which provides for seven members (five professionals and two public) appointed by the Governor to serve four-year terms. Each member must be a United States citizen and a California resident for a minimum of five years prior to appointment. Additionally, professional members must have at least five years of licensure in California prior to appointment. Appointment restrictions include provisions that no more than two professional members at one time may be graduates of the same chiropractic college or be residents of the same county. Also, administrators, policy board members, or paid employees of chiropractic colleges are not eligible for Board appointments until more than one year has elapsed since termination of the college affiliation. As of September 1, 2001, the Board consists of three members (two professional and one public). Since Section 3 of the Act requires the affirmative vote of four Board members to carry motions, adopt resolutions and regulations or authorize the issuance of licenses, as of the submission of this report, the Board lacks a quorum.

ISSUE #4: There have been some long-standing management and deficiencies with the Board. Are there still issues that the Board needs to address?

Question #4 for the Board: *What were some of the long-standing deficiencies with the Board and what has been done to rectify these problem areas?*

Background: Past operational problems with this Board include: (1) budget problems that resulted in illegal deficit spending and suspension of enforcement cases because of insufficient funds; (2) inconsistent and inappropriate application of chiropractic practice laws and regulations; (3) staffing problems; (4) lack of cite and fine program; (5) no measurable consumer outreach or education efforts; (6) backlog of enforcement cases; (7) focus on micro-managing of staff rather than policy-making or long-range planning.

The Board has had some long-standing management deficiencies including budget shortfalls and excess reserves, low employee morale, inadequate data reporting systems, and lack of long-range planning. Recent staffing changes have resulted in promising improvements in the day-to-day management of Board operations. However, the Board itself as a policy making body needs to show more leadership in its enforcement of the Chiropractic Act, as opposed to relying on an overly technical, highly bureaucratic approach to chiropractic discipline.

ISSUE #5: The Board appears to be spending a disproportionate amount on the administration of its program as compared to other consumer boards.

Question #5 for the Board: *Please describe and itemize your annual expenditures, particularly administrative costs and enforcement costs. Please explain the comparison of BCE to similar boards which shows that BCE spends proportionately less on enforcement and more amount on administrative costs.*

Background: The Board appears to be spending disproportionately more on its administrative costs than other regulatory programs. In 1999, administrative costs comprised 48% of the average % spent by program for the past 4 fiscal years, while enforcement was also at 48%. In 2001, administrative costs comprise 51% of funds spent by the program for the past 4 fiscal years, and enforcement makes up 42% of the budget. The amount of expenditures on enforcement is disproportionately low in comparison with other boards. It is important to understand the factors weighed in the tabulation of administrative and enforcement costs to know if BCE is in fact spending disproportionately to the norm, or if the proportions of percent spent by category are off because BCE calculates costs differently.

ISSUE #6: Is the Board in need of additional positions to operate its licensing and enforcement programs?

Question #6 for the Board: *Has the Board identified future staffing needs? Is the Board prepared to justify the addition of new staff to the Committee, as well as to the Department of*

Finance? What has been the position of Department of Finance on the Board's requests for additional positions?

Background: The Board currently has 14 permanent full-time employees, all working in a complex program dedicated to licensing, continuing education, enforcement and fiscal and support services. As of July 2001, all budgeted positions were filled. Until that time, the Board had been heavily relying on student assistants and retired annuitants to carry out many of the important day-to-day responsibilities of vacant positions. This level of staffing is similar to other boards that have an equivalent number of licensees. However, because the Board is independent of the Department, in the past it appeared to lack staff resources to perform a range of functions that could improve its ability to carry out its enforcement program, as well as prepare and analyze data related to its enforcement operations. In the previous review, the Board did not have staff resources to manage electronic data that could provide valuable analytical information.

Presently, the Board has ample fund resources, and fees are relatively low in comparison to what physicians pay in licensing fees to the Medical Board of California. Following the 2000 review, in an attempt to follow the Joint Committee's recommendations that the Board spend down the reserve to more appropriate levels, the Board conducted an analysis and proposed the following potential program enhancements:

- Enforcement staff augmentation of two positions and \$114,000 for FY 2001/02 – a staff services analyst and an office technician. (Although this budget request was denied by the Department of Finance, the Board is seeking this augmentation for fiscal year 2002/03.)
- Augmentation of 2.4 positions and \$121,000 for FY 2001/02 – one to handle legislative/regulatory efforts, one to perform general clerical duties, and a .4 office technician position. (The Department of Finance approved one position to handle the Board's legislative and regulatory efforts.)
- Information technology expert for FY 2001/02 to oversee and coordinate all web site enhancements and maintenance, as well as provide hands-on development and maintenance of all internal databases. (This budget change proposal was denied by the Department of Finance, however, DOF did authorize a board augmentation of \$50,000 to contract with private vendors for information technology assistance for fiscal year 2001/02. The Board is seeking budget authority in this area for fiscal year 2002/03.)
- Temporary help augmentation to assist in hiring retired annuitants to conduct Board investigations and to help supplement partial and limited term positions filling receptionist and continuing education duties. (The Department of Finance denied this budget proposal. However, the Board is seeking budget authority to increase its partial limited term positions for fiscal year 2002/03.)
- Out of state travel augmentation to allow Board staff to visit out-of-state Board-approved chiropractic colleges and to diversify participation in regulatory association activities held outside of California. However, the Board is seeking budget authority to increase its out-of-state travel funding for fiscal year 2002/03.

ISSUE #7: The Board continues to have an excessive fund reserve of almost two years of budgetary expenditures?

Question #7 for the Board: *Please go over your current fund condition, your efforts in the last two years to spend this money, and your long-term plans if the Board does not get authority for new positions. Has the Board evaluated how to better manage its budget so that an excess reserve will not continue? What is the Board's long-term plan for ensuring adequate and stable funding for its operations?*

Background: The Board has maintained a fairly large reserve for the past four years as revenues have exceeded expenditures. The Board was told at the last sunset review that it needs to address this excessive fund reserve. In 1999, the Board had a reserve level of 24.77 months and projected continuous growth of reserves for the following fiscal years. Currently, the Board has estimated a reserve level of 25 months for FY 00-01, 27 months for FY 01-02, and 30 months for FY 02-03. The Board is aware that its reserve level exceeds the recommended three-to four-month reserve level. This is a unique situation for an oversight board – to the Committee's knowledge, no other board has a similar situation of extraordinary reserve surplus. In an effort to follow the Joint Committee's recommendation to spend down the reserve to recommended levels, the Board conducted an analysis of its fund and found that program enhancements would not adversely impact its future operations. These enhancements were suggested and, except for one regulatory staff position, were denied by the Department of Finance. The BCE has made an effort to comply with the previous recommendation, but has not yet achieved it due to DOF not approving program enhancements.

ISSUE #8 What is the status of cost recovery efforts and what challenges to cost recovery exists?

Question #8 for the Board: *Please describe your efforts to deal with the legal challenge to your efforts, the resources utilized, and assistance both requested and received from other boards or agencies in doing so. What other or additional resources are necessary?*

Background: CCR Section 317.5 provides that disciplined chiropractors can be compelled to pay for the reasonable costs of investigation and enforcement of their cases. Historically, the Board seldom recoups costs from licenses that are revoked. Therefore, in April 2000, the Board applied for and was accepted in the Franchise Tax Board's (FTB) Interagency Intercept Collections program, which allows FTB to intercept tax refunds and lottery winnings on behalf of the Board for cost recovery reimbursements. The Board requests cost recovery in every disciplinary action; however, in most cases, the Board will not require payment of costs when a license is surrendered until a petition for reinstatement is submitted to the Board because it is more cost-effective than going to a hearing.

Currently, the Board is in the midst of a legal battle (Zuckerman v. Board of Chiropractic Examiners) challenging CCR Section 317.5, enacted in August 1996, which provides that licensed chiropractors who are disciplined can be compelled to pay the reasonable costs of investigation and enforcement. The Attorney General's Office has advised that the outcome of

the Zuckerman case will impact every consumer board, commission or committee that has cost recovery authority. If the Supreme Court upholds the Court of Appeal decision to invalidate CCR Section 317.5, cost recovery authority provided to other licensing entities under Business and Profession Code Section 125.3 will be in jeopardy.

ISSUE #9: The Board has been criticized in the past for a lax enforcement program. The Board needs to demonstrate what changes or improvements have been made to enhance the Board's enforcement program and what other changes or improvements are anticipated.

Question #9 for the Board: *What changes has the Board made to improve the effectiveness and efficiency of its enforcement program? What agencies does this Board use to investigate complaints before they may be referred for disciplinary action? What data can the Board provide to show that it has gotten rid of the entire backlog of cases? Please provide information on the latest policy to hire outside private investigators and retired police. Please discuss the improvements since this change was made. Please demonstrate how the hiring of private investigators or retired police is more efficient from a cost effectiveness standpoint than going through either Department of Insurance or the Department of Consumer Affairs. What is the process for contracting out with private investigators? What standards or criteria are used? What kind of bid will the Board accept? What support or resources does the Board provide for contract investigators to ensure that enforcement is of appropriate scope and quality? How would you describe ongoing communication between the Board and contract investigators? How do you ensure that the enforcement philosophy of contract investigators is aligned with BCE and state principles? Since the contract investigators are not state investigators, are they able to maintain a good working relationship with state attorneys from the Attorney General's Office? Please describe the Board's relationship with the Attorney General's office and how this differs as compared to other boards under DCA.*

Background: Overall, the complaint and case processing over the past four fiscal years has decreased, however the average time to complete investigations has increased. This increase is due to the fact that from July 1, 2000 to September 1, 2000, the Board did not have investigators to work its cases because of DOI's withdrawal from the Board's investigations contract. After the DOI notified the Board that they could no longer investigate cases, the BCE entered into sole source contracts for investigative services. Contract investigators completed cases within 30-60 days that the DOI was completing in six months. The shift to contract investigators dramatically decreased the investigative costs from FY 1999/00. The Board was paying DOI between \$95.00 and \$99.00 per hour for investigative services; the Board's contract investigators are reimbursed \$35.00 per hour, plus expenses. As an emergency measure, the Board put out the message that it was in dire need of investigative services. Through its relationships with other state agencies and the National Insurance Crime Bureau, the Board identified highly qualified individuals interested in contracting out their investigative skills. These three individuals are under sole source contracts. According to the Board, all of the investigators on contract with the Board are retired law enforcement officials with extensive experience in investigations. The Board's Chiropractic Consultant and Attorney General liaison assist these individuals in acquiring the necessary knowledge of the laws and regulations governing the chiropractic profession.

Most (47%) BCE investigated cases were closed within two years, while the majority (41%) of AG cases were closed within 1 year. The number of investigations completed over the last three years has increased, as have the cases closed by the Attorney General. Board records also reflect a decrease in the age of these cases. Since the Board now contracts for its investigative services, it is anticipated that future years should reflect a decreased timeframe for investigation closures because Board staff can more readily monitor and prioritize caseloads.

ISSUE #10: What is the effect of a pending state ballot measure on insurance fraud enforcement by the Board?

Question #10 for the Board: *What are the Board's plans for implementing the provisions of SB 1988, which relates to disciplinary actions against chiropractors who commit insurance fraud, assuming that Proposition 44 passes in March 2002?*

Background: In 1999, the Senate Insurance Committee held hearings to investigate the overall problem of auto insurance fraud in California, including one of the contributing factors; whether disciplinary actions are being taken against health care professionals who commit insurance fraud. Proposition 44 is a product of the work done by the Senate Insurance Committee and placed in SB 1988, a bill which carried the main recommendations of the hearing and subsequent report, "*Fraud on Wheels*". Among these recommendations was the targeting and invoking of licensure penalties for chiropractors convicted of insurance fraud.

Specifically, the Legislature proposes to place sections 5 and 6 of SB 1988, relating to the Board of Chiropractic Examiner's (BCE) investigation, disciplinary, and revocation mandates on the March 2002 ballot as Proposition 44. This initiative would add two new sections to the Business and Professions Code which would make it unprofessional conduct for a chiropractor to procure patients through the employment of runners, cappers, or steerers and requires the BCE to revoke the license of any chiropractor upon the second conviction or conviction of multiple counts of certain insurance fraud offenses. In addition, it would require the BCE to investigate a licensed chiropractor against whom an information or indictment has been filed alleging involvement in false or fraudulent insurance claims or settlements.

ISSUE #11: What is being done about the handling of complaints by student assistants?

Question #11 for the Board: *Please describe the appropriate role of a student assistant in the operations of the Board. In light of sensitive nature of consumer complaint processing, could the Board move the student assistant to a position that does not deal with issues such as consumer complaints?*

Background: The Committee is concerned about the BCE using student assistants specifically for handling complaints. This situation arose when staff augmentation was needed to assist with the citation program and the processing of consumer complaints. The BCE requested use of the

surplus reserve for an Office Technician position to fulfill these duties. The request for these positions was denied, and the Board is requesting this augmentation for FY 2002/03. In the meantime, a part-time student assistant who has now left the Board filled this position.

ISSUE #12: Are adequate means of restitution being provided to consumers?

Question #12 for the Board: *Does the Zuckerman v. the Board of Chiropractic Examiners case currently threaten restitution to consumers?*

Background: A concern was raised in the 1999 JLSRC review that the Board does not have a formal restitution program to collect monetary damages for patients harmed by licensee incompetence or negligence. The only provision the Board has for restitution to consumers is through disciplinary action. Since the vast majority of cases resulting in Board discipline result from criminal convictions for insurance fraud or sexual misconduct, licensees typically have been required to provide consumer restitution through the criminal justice system. No changes were recommended in 1999, and no changes were made.

ISSUE #13: Are the current continuing education and competency requirements adequately measuring competency?

Question #13 for the Board: *How has the Board considered enhancing the CE requirements so that they guarantee continued competence? For what reason is a nationally recognized testing requirement not being instated?*

Background: In the 1999 JLSRC review, the Committee noted that the current requirement of Continuing Education (CE) coursework does not guarantee continued competence, and urged the Board to consider alternatives to the current requirements. Specifically, the Committee suggested the alternative of adding a nationally recognized testing requirement to the CE program to replace the annual coursework requirements for a specified number of years for chiropractors with licenses in good standing. Nothing in the 2001 Sunset Review report section on Continuing Education Verification or Competency requirements mention any action pursuant to this suggested alternative.

ISSUE #14: Should more efficient and appropriate terms for establishing reciprocity be considered and instated?

Question #14 for the Board: *What provisions does the Board plan to put in place to allow for greater reciprocity, specifically for currently licensed out-of-state chiropractors seeking to work in California?*

Background: Section 5 of the Chiropractic Act and CCR 323 set forth requirements for reciprocal licensure. In order to assure that only competent practitioners are granted reciprocal licensure, applicants are required to must meet the following requirements in order to reciprocate to California.

- Must be graduates from a Board-approved chiropractic college, and must have completed the minimum hours and subjects required by California law at the time their licenses were issued.
- Must have passed an equivalent examination in each of the subjects examined in California in the same year as the applicant achieved licensure; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Must have 5 years of chiropractic practice and must hold valid license from the state from which they are reciprocating; i.e., active and no disciplinary action.
- State from which they are reciprocating agrees to reciprocate with California.

The Board does not issue temporary licenses or permit. Thus, no reciprocity applicant may commence practice in California until all requirements for licensure are met. For a number of reasons, reciprocity licensure is very difficult to attain. Common problems reciprocity applicants encounter:

- Not examined in each of the subjects required in California at the time they were issued licenses; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Did not receive scores of 75% or better in examination subject matter.
- Do not hold valid licenses (active and no disciplinary action) from states they are reciprocating from.
- Applicant's state will not reciprocate with California.

If applicants can not meet the requirements for reciprocity licensure, then the applicant apply for a California license as a new applicant. This often entails re-enrolling in classes and re-taking the national exams. A possible solution to exam equivalency problems that reciprocity applicants encounter would require amendment to Chiropractic Initiative Act. In lieu of requiring equivalent successful examination in each of the subjects examined in California in the same year as the applicant achieved licensure, instead, require passage of Parts I & II of the National Exam and passage of a 200-question, multiple choice Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The SPEC examination is designed to assess only licensed or previously licensed practitioners in areas reflecting clinical conditions and general practice. Currently, 26 states use the SPEC in one form or another for reciprocity purposes.

ISSUE #15: Should the Board establish that a Bachelors Degree be a requirement for licensure?

Question #15 for the Board: *What are the Board's plans on how to proceed with this issue?*

Background: The Board is continually reappraising licensing requirements, including whether or not to require a bachelor's degree. Eight licensing jurisdictions have established bachelor's degree preprofessional training requirements – Florida, Kansas, Maryland, Montana, North Carolina, Rhode Island, Wisconsin, and the U.S. Virgin Islands. The bachelor's degree requirement issue has been a topic of debate for years by the Federation of Chiropractic Licensing Boards and CCE. To date, opposition of the chiropractic colleges and defenders of the status quo have blocked proposals to make a bachelor's degree requirement a national standard. Since California licenses constitute approximately 19 percent of the nation's active chiropractors, any change in education requirements by this Board will be broadly felt and will become the basis for a national trend. However, in an effort to assure that Board action will not unnecessarily bar qualified individuals from entering the chiropractic profession, the Board will carefully assess the situation before proposing a change in education requirements that would require amending the act.

ISSUE 16#: Should Chiropractors be able to conduct physical examinations for high school sports?

Question #16 for the Board: *What is the Board's policy on chiropractors conducting physical exams for high school athletics? Does the chiropractic scope of practice confer this authority on licensees?*

Background: This issue came up in the previous sunset review. The Board's response was that chiropractors are not only trained and qualified to conduct such physicals, but are also authorized to do so within their scope of practice. In fact, certain codes and regulations specify that doctors of chiropractic can perform physical examinations. All candidates for licensure are tested in the subject of physical examination and diagnosis in Parts III and IV of the NBCE examination. The ability to examine and diagnose patients of all ages is necessary because patients of all ages have the ability to directly access chiropractic care without referral from any other health care provider. It is the Board's position that all California chiropractors are under the professional obligation to examine their patients and to determine when a condition requires referral to other qualified health care practitioners. This obligation is present in all patients, regardless of age, and failure to do so may result in disciplinary action against the license. Thus, in the case of school physicals, it seems to be left to the discretion of individual school districts to determine the types of health practitioner physical examination certifications they will deny or accept.

ISSUE #17: Are there instances in which Chiropractors perform adjustments on newborn children?

Question #17 for the Board: *How widespread is the practice of chiropractors doing pediatric adjustments? Is this activity allowed in chiropractic scope of practice? Is appropriate education for this activity provided under the licensure requirements?*

Background: There is some indication that chiropractors are performing adjustments on newborns. Is the Board aware of such activities? If so, what action, if any, should the Board take?

4.

FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE AND THE DEPARTMENT OF CONSUMER AFFAIRS

The Following Recommendations were Adopted by the Joint Legislative Sunset Review Committee on May 1, 2002 by a Vote of 5 to 1:

ISSUE #1. (CONTINUE THE REGULATION OF THE PROFESSION?) Should the licensing and regulation of chiropractors be continued?

Recommendation #1: *The Joint Committee and the Department recommend the continued regulation of chiropractors in order to ensure public health and patient safety.*

Comments: Consumers should continue to have the assurance that chiropractors are properly licensed. Licensing chiropractors ensures that they have the necessary knowledge, skills, and abilities to provide care safely and effectively. Regulation of the profession also creates an enforcement structure so that appropriate action can be taken when misconduct occurs.

The Board of Chiropractic Examiners (Board or BCE) was created in December 1922 as the result of a ballot initiative approved by the voters of California. The Board regulates the practice of chiropractic care and licenses approximately 15,000 practitioners. Chiropractors provide non-drug, non-surgical health care through treatment of the musculoskeletal and nervous systems and manipulation of the spinal column and bony tissues. The Board also approves chiropractic schools and colleges whose graduates may apply for licensure in California. The Board has an annual budget of approximately \$2.5 million with a reserve of approximately \$4.7 million and 12.5 staff.

Of note, this Board is not situated within the Department of Consumer Affairs¹. The Board's stand-alone structure places it outside of the administrative services and oversight functions provided by the Department. As a result of this unique structure, the Department does not

¹ The Board of Chiropractic Examiners was created on December 21, 1922 as the result of an initiative measure approved by the voters of California on November 7, 1922. As a result, the Board is a stand-alone regulatory entity, not under the jurisdiction of the Department of Consumer Affairs.

monitor the operations of the Board and is in a limited position to offer meaningful comment on its operation.

ISSUE #2. (CONTINUE THE BOARD?) Should the Board of Chiropractic Examiners be continued?

Recommendation #2: *The Joint Committee and the Department recommend the continuation of the Board.*

Comments: The DCA and the Joint Committee recommend retaining a Board for regulating the practice of chiropractic care.

The DCA notes that it has not been presented with any information suggesting a need to change the current regulatory structure for the chiropractic profession, and further reminds the JLSRC that the Department does not monitor this Board.

ISSUE #3. (SHOULD THE CHIROPRACTIC ACT BE CODIFIED IN STATUTE?) Should consumer protections which are currently applicable to other DCA health practitioners be applicable to chiropractors?

Recommendation #3: *The Joint Committee and the Department recommend that all current and future provisions of the Business and Professions Code that apply to other health-related practitioners and licensing boards should also apply to chiropractors.*

Comments: Consumers who access health care services from chiropractors should have the same protections as other consumers.

All current and future provisions of the Business and Professions Code that apply to other health-related practitioners and licensing boards should also apply to chiropractors. Many of these are ministerial functions and do not represent significant policy changes or impact the scope of practice. Including chiropractors in these code sections will ensure consistency among health care providers.

All current California code sections relating to chiropractors should be reviewed to ensure constitutionality by ascertaining that any amendments to sections added by an initiative measure have been given proper approval by the electorate. (See, for instance, Proposition 103 Enforcement Project v. Quackenbush.)

Unlike the state's 32 other professional licensing programs that operate as semi-independent units of the Department of Consumer Affairs, the Chiropractic Board is completely independent of Department oversight. Nor is it subject to direct legislative authority. The JLSRC recommends that the BCE be treated the same as other licensing boards under the DCA, and that its initiative provisions be codified and subject to change or revision by the Legislature without having to seek a vote of the electorate.

ISSUE #4. (CHANGE BOARD COMPOSITION?) Should the current composition and make-up of the Board, with 5 professional and 2 public members, be changed?

Recommendation #4: *The Joint Committee recommends adding two additional public members for a total of nine members (five professional and four public).*

Comments: This composition would provide adequate public representation while continuing to maintain the expertise needed for chiropractic issues. Requiring closer parity between public and professional members is consistent with both this Committee's and the Department's recommendations regarding other boards that have undergone sunset review.

The Board is unique in that all seven members of the board members are appointed by the Governor with no appointments made by the Legislature. The appointing authority for the two new appointments should be given to the Legislature – one to the Senate Rules Committee and one to the Speaker of the Assembly.

ISSUE #5. (FUND RESERVE IS EXCESSIVE.) Should the Board continue in its efforts to address its excessive fund reserve?

Recommendation #5: *The Joint Committee recommends that the Board continue with its plan to address excessive fund reserve by further strengthening their enforcement program and dealing with staffing shortages.*

Comments: The Board has maintained a fairly large reserve for the past four years as revenues have exceeded expenditures. The Board was told at the last sunset review that it needs to address this excessive fund reserve. In 1999, the Board had a reserve level of 24.77 months and projected continuous growth of reserves for the following fiscal years. Currently, the Board has estimated a reserve level of 25 months for FY 00-01, 27 months for FY 01-02, and 30 months for FY 02-03. The Board is aware that its reserve level exceeds the recommended three- to four-month reserve level. This is a unique situation for an oversight board – to the Committee's knowledge, no other board has a similar situation of extraordinary reserve surplus. In an effort to follow the Joint Committee's recommendation to spend down the reserve to recommended levels, the Board conducted an analysis of its fund and found that program enhancements would not adversely impact its future operations. These enhancements were suggested and, except for one regulatory staff position, were denied by the Department of Finance. The BCE has made an effort to comply with the previous recommendation, but has not yet achieved it due to Department of Finance not approving program enhancements.

ISSUE #6. (IMPROVE LICENSING RECIPROCITY?) Should the Board continue its efforts to improve on licensing reciprocity for applicants from other states and countries?

Recommendation #6: The Joint Committee recommends that the Board review its current requirements for reciprocal licensure and implement more efficient and appropriate terms for establishing reciprocity.

Comments: Section 5 of the Chiropractic Act and CCR 323 set forth requirements for reciprocal licensure. In order to assure that only competent practitioners are granted reciprocal licensure, applicants are required to must meet the following requirements in order to reciprocate to California.

- Must be graduates from a Board-approved chiropractic college, and must have completed the minimum hours and subjects required by California law at the time their licenses were issued.
- Must have passed an equivalent examination in each of the subjects examined in California in the same year as the applicant achieved licensure; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Must have 5 years of chiropractic practice and must hold valid license from the state from which they are reciprocating; i.e., active and no disciplinary action.
- State from which they are reciprocating agrees to reciprocate with California.

The Board does not issue temporary licenses or permit. Thus, no reciprocity applicant may commence practice in California until all requirements for licensure are met. For a number of reasons, reciprocity licensure is very difficult to attain. Common problems reciprocity applicants encounter:

- Not examined in each of the subjects required in California at the time they were issued licenses; i.e., clinical competency, adjustive technique, physiotherapy, and x-ray.
- Did not receive scores of 75% or better in examination subject matter.
- Do not hold valid licenses (active and no disciplinary action) from states they are reciprocating from.
- Applicant's state will not reciprocate with California.

If applicants can not meet the requirements for reciprocity licensure, then the applicant apply for a California license as a new applicant. This often entails re-enrolling in classes and re-taking the national exams. A possible solution to exam equivalency problems that reciprocity applicants encounter would require amendment to Chiropractic Initiative Act. In lieu of requiring equivalent successful examination in each of the subjects examined in California in the same year as the applicant achieved licensure, instead, require passage of Parts I & II of the National Exam and passage of a 200-question, multiple choice Special Purposes Examination for Chiropractic (SPEC) administered by the National Board of Chiropractic Examiners. The SPEC examination is designed to assess only licensed or previously licensed practitioners in

areas reflecting clinical conditions and general practice. Currently, 26 states use the SPEC in one form or another for reciprocity purposes.

ISSUE #7. (REQUIRE A BACHELORS DEGREE?) Should the Board establish that a Bachelors Degree be a requirement for licensure?

Recommendation #7: *The Joint Committee recommends that the Board continue to study this issue and report back to the Legislature on its findings.*

Comments: The Board is continually reappraising licensing requirements, including whether or not to require a bachelor's degree. Eight licensing jurisdictions have established bachelor's degree pre-professional training requirements – Florida, Kansas, Maryland, Montana, North Carolina, Rhode Island, Wisconsin, and the U.S. Virgin Islands. The bachelor's degree requirement issue has been a topic of debate for years by the Federation of Chiropractic Licensing Boards and CCE. To date, opposition of the chiropractic colleges and defenders of the status quo have blocked proposals to make a bachelor's degree requirement a national standard.

Since California licenses constitute approximately 19 percent of the nation's active chiropractors, any change in education requirements by this Board will be broadly felt and will become the basis for a national trend. However, in an effort to assure that Board action will not unnecessarily bar qualified individuals from entering the chiropractic profession, the Board will carefully assess the situation before proposing a change in education requirements that would require amending the act.